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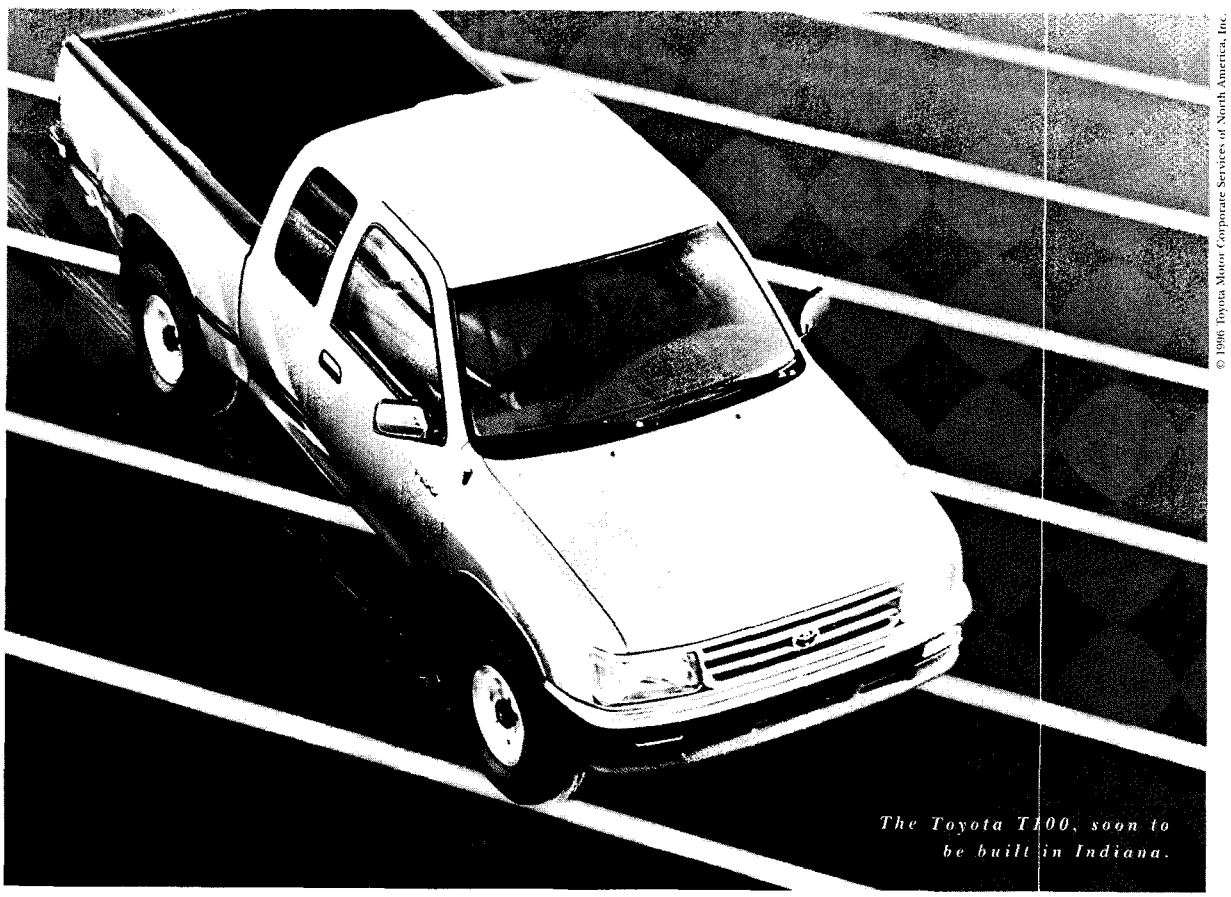

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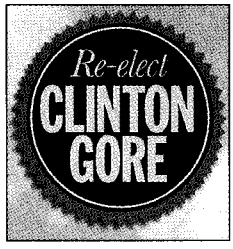

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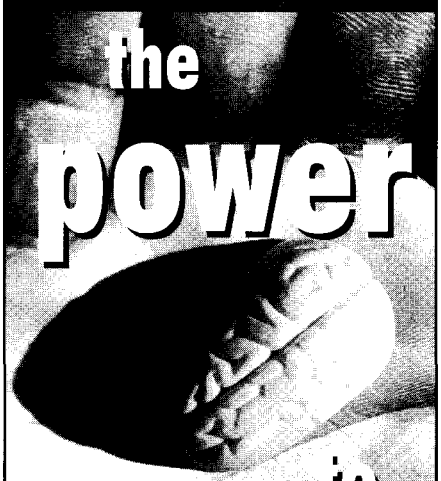
Prozac goes on trial

the power to harm



mind, medicine, and murder on trial

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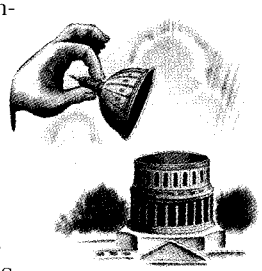
FROM WASHINGTON

Unvisionary

It's a ritual of presidential campaigns: challengers attack incumbents for lacking a foreign policy vision. Bob Dole, true to form, has called the Clinton administration's actions abroad "rudderless and illusionary." In fact, U.S. foreign policy has been increasingly successful precisely because Bill Clinton has refused to embrace chimerical visions. As a result, he has skillfully piloted the U.S. through a sea of new world disorder.



Though the Council on Foreign Relations will never admit it, the last thing U.S. foreign policy needs is a grand strategy. When Henry Kissinger, for instance, tried to implement his esoteric theories of triangulation between Washington, Beijing and Moscow to create a "new structure of peace," the result was a massive erosion of American prestige and power. Despite the myth that the theory of Soviet containment provided a bipartisan consensus for four decades, the reality is that the U.S. muddled its way through the cold war. America's dealings with the Soviet Union were almost always ad hoc.

In short, American foreign policy did not suddenly become confusing under Bill Clinton. It has always been confused. And the traits deplored by Clinton's foes—his flexibility and adaptability—are the very ones that make for an impressive foreign policy.

Clinton's woes early in his presidency stemmed from his attempt to implement an overarching international strategy. In 1992, Clinton mocked Bush for being a "foreign policy president" but himself signed on to the attempt to build a "new world order." He ridiculed Bush's failure to intervene in Bosnia and promised to press for human rights in China, Haiti and Cuba. Clinton's solution to this ambitious agenda, which he feared would vitiate his emphasis on domestic issues, was to hand foreign affairs off to the United Nations.

The tone was set by Undersecretary of State Peter Tarnoff, who called for the retreat of American power around the globe. Tarnoff was quickly muzzled by Warren Christopher, but his Vietnam syndrome spirit lived on. U.N. Ambassador Madeleine Albright and National Security Adviser Anthony Lake concocted a foreign policy called "assertive multilateralism." Rather than acting unilaterally, the U.S. would bankroll the U.N. to act as gendarme in Somalia, Rwanda and Bosnia. Here was a strategic vision if there ever was one. The consequences were clear: a hapless U.N. sanctioning ethnic cleansing in Bosnia and American rangers dragged through the streets of Mogadishu.

After the oxymoronic "assertive multilateralism" was discredited, things began to turn around for the Clinton administration. Consistent with his flexibility, Clinton turned to tactical rather than strategic action. And because of the U.S.'s global preeminence, the tactics succeeded. The first sign came in Haiti, where the administration had initially been humiliated when the *USS Harlan County*, carrying military trainers to respond to demonstrations in Port-au-Prince, was turned back in October 1993 by a pro-government mob. By September 1994 President Clinton, with American troops poised to invade Haiti, stared down the island's military junta, paving the way for a democratically elected regime. And in 1994, the U.S. massed forces in the Persian Gulf in response to Iraqi troop movements near the Kuwait border.

This wasn't all. In the summer of 1995, after unconscionable dithering, Clinton launched Operation Deliberate Force, which ended up forcing the Serbs to sign the Dayton Peace Accords. The NATO air strikes discredited the doomsday scenarios by which any military intervention in the former Yugoslavia would lead us down the slippery slope to Vietnam. Clinton's readiness to deploy military force was again evident this March when he sent two carrier battle groups to counter Chinese saber rattling over the Taiwan straits and, most recently, when he launched cruise missiles against Saddam Hussein.

To hear Republicans tell it, however, Clinton remains a hobbledehoy, stuck in the immature foreign policy of what might be called his first term, the period from 1992 to 1994. The transformation that took place during Clinton's

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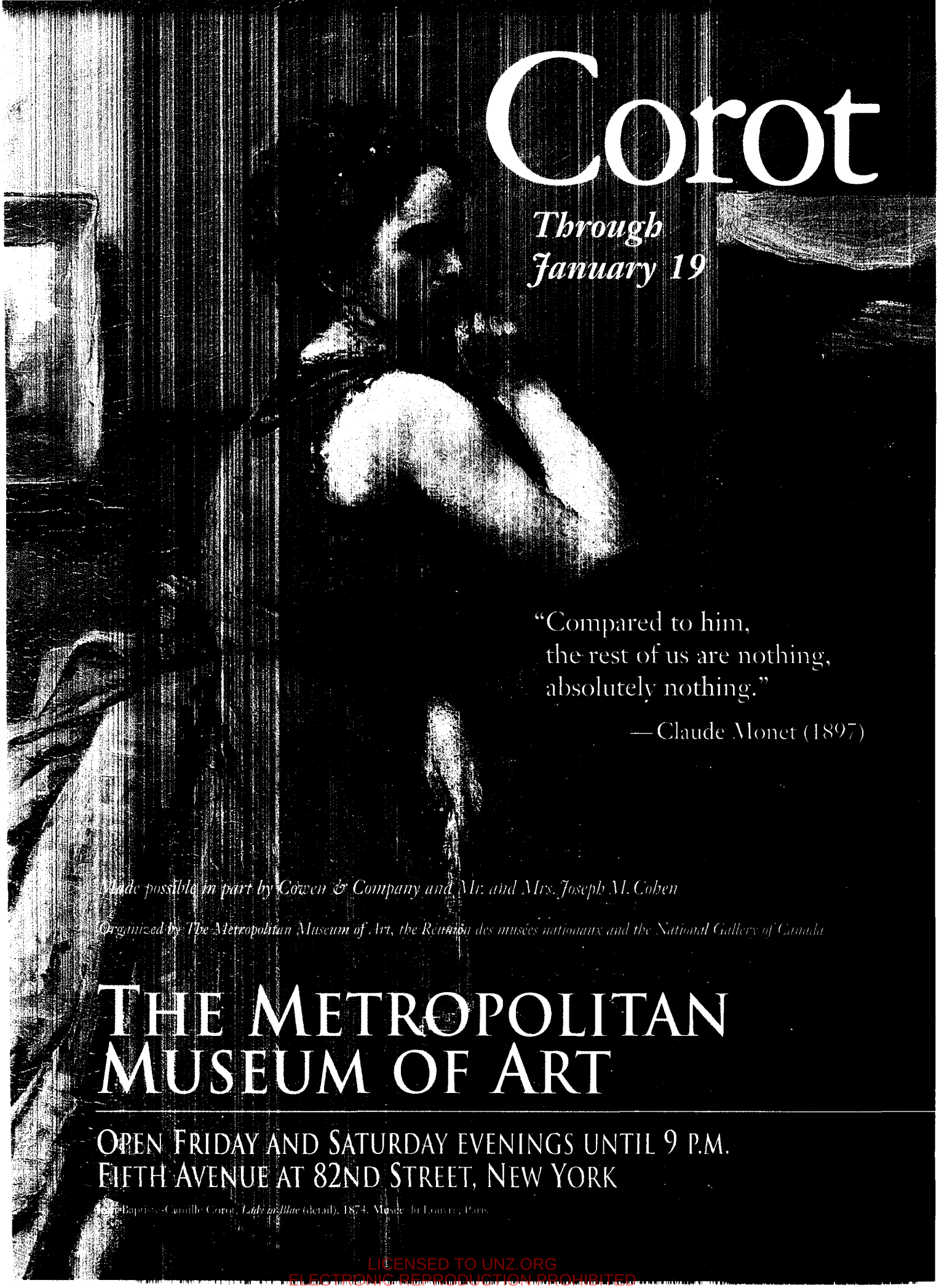

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"Compared to him, the rest of us are nothing, absolutely nothing."

—Claude Monet (1897)

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CORRESPONDENCE

Tolerate this

To the editors:

In "The Last Taboo" (October 14) Wendy Kaminer smugly braves condemnation when she suggests that religious belief may be childish, that "worshiping a supernatural deity ... is like worrying about monsters in the closet who find you tasty enough to eat." As an atheist she claims to be hated more than pedophiles, since they have a disease, while her atheism is "a choice, a willful rejection of beliefs to which vast majorities of people cling." (What indignity? Well, her editorial remark that the sacraments are "silly" was called "offensive" by her *New York Times* editors.)

In six pages, however, Kaminer never considers the obvious: that she may not understand the beliefs, widely varying, which she supposedly knows enough to reject. As usual, TNR, like a bad nineteenth-century anthropologist, treats religious people as credulous fools or superstitious toddlers. The hundreds of millions of non-fundamentalist theists, and centuries of their philosophers (has she read any Martin Luther King?), are ignored or seen as affected, nostalgic or trendy (when they dare to speak politics).

NADAV CAINE
Stanford, California

To the editors:

Given empiricism's track record, Wendy Kaminer's faith, if she'll pardon the expression, in science and reason is truly awe-inspiring. Thomas Jefferson's racism was based on his observations (see Query XIV, Notes on the State of Virginia). Mencken, whom Kaminer liberally quotes, was an anti-Semite. And one used to be able to get a university degree in the "science" of eugenics, a major pillar of National Socialism.

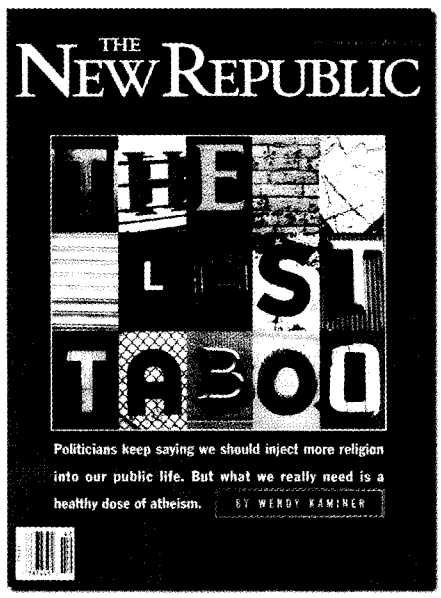
And the record of public atheism does not inspire confidence. Whom shall we emulate? The Soviet Union? China? Ceauşescu's Romania, perhaps? Until atheism learns tolerance, it deserves the scorn it receives. But if Kaminer is comforted by this irrational belief system of hers, perhaps it is not my place to pass judgment.

CHRISTOPHER S. JOHNSON
Webster Groves, Missouri

To the editors:

Wendy Kaminer's interesting article "The Last Taboo" is marred by two fundamental flaws. First, her assertion that "Government can help make people comfortable.... But government cannot make people good" sounds like something I'd expect to hear from the likes of David Duke. Can Kaminer possibly believe that the civil rights movement was solely about making people comfortable and not about affirming the moral notion that it is wrong to discriminate against African Americans or against any Americans because of their racial, ethnic or cultural background?

Second, while suggesting that public policy should be formulated with respect for empirical realities, Kaminer praises clerics for providing moral leadership in the fight against strategic defense, the Salvadoran government and welfare reform. Sounds like Kaminer


THE
NEW REPUBLIC
THE LAST TABOO
Politicians keep saying we should inject more religion into our public life. But what we really need is a healthy dose of atheism.
BY WENDY KAMINER

needs to follow her own advice and ground her thinking about these issues less in fashionable ideology and more in empirical reality.

ROBERT J. MAYER
Charlotte, North Carolina

Health tax

To the editors:

In his critique of the Dole tax-cut proposal ("Big Ideas," October 14), Michael Sandel makes the oft-repeated statement that Americans pay a smaller share of national income in taxes than do citizens of any other industrial democracy. This statement ignores the fact that American workers, unlike workers in other industrial democracies, pay for health insurance through premiums rather than taxes. If these premiums are considered as the equivalent of taxes, then the tax burden on American citizens rises substantially. This fact does not make the Dole proposal a good idea, but it does help explain why the average American feels overtaxed.

JOSEPH ONEK
Washington, D.C.

(C) section

To the editors:

Jeffrey Rosen's article "Sex Games" (October 14) attacks me for arguing that clause (c) of the proposed initiative to eliminate affirmative action in California would increase the legal authority for gender discrimination. Rosen said, in part, "Chemerinsky's arguments are tendentious and implausible, even by the standards of partisan debates."

Clause (c) states: "Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting." This increases the legal authority for gender discrimination in three ways.

First, no current law, state or federal, authorizes gender discrimination in education or contracting if it is reasonably necessary to a bona fide qualification. Clause (c), by its very terms, permits gender discrimination greater than that allowed in any existing law.

Second, current employment discrimination law allows gender discrimination only if it is reasonably necessary to a bona fide occupational qualification. The Supreme Court has declared that the term "occupational" is key in limiting the scope of the exception. Clause (c) omits that word.

Third, current California constitutional law allows gender discrimination only if it is necessary to achieve a compelling interest. Clause (c) amends the California Constitution to allow gender discrimination in education, contracting or employment if "reasonably necessary," a much less protective standard.

Rosen says that clause (c)'s impact is limited because it begins with the words, "Nothing in this section." If adopted, Proposition 209 would amend the California Constitution. Clause (a) of Proposition 209 would be the controlling provision to be applied by California courts any time an issue arose of race or gender discrimination in education, contracting or employment. Clause (c) creates an exception to clause (a) and expressly authorizes gender discrimination.

ERWIN CHEMERINSKY
Los Angeles, California

Jeffrey Rosen replies:

The core of Professor Chemerinsky's argument is that clause (c) of the California Civil Rights Initiative would supersede, or

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repeal by implication, the California Constitution's current equal protection guarantees. But California courts have held repeatedly that one constitutional provision will not be construed to supersede another unless there is an irreconcilable conflict between them. Here, there is no plausible conflict between the California equal protection clause, which bans gender discrimination, and clause (c) of CCRI, which declines to ban gender discrimination. Clause (c) says that "nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex"; it doesn't say that the state shall be authorized to *impose* bona fide qualifications based on sex. Professor Chemerinsky's conclusion that clause (c) would "increase the legal authority for gender discrimination" is not, therefore, convincing.

Harvest of discontent

To the editors:

In 1983, I left a secure clerical position that I held for ten years with a Los Angeles law firm in order to become a "pioneering" kibbutznik in Israel's Galilee region. For much of the decade that followed, I did agricultural work in conditions that would shock Cesar Chavez. My communal duties necessitated saturating the land with pesticides that didn't do my liver any good either, brutally raising dairy sheep and consistently watching our efforts come to naught because no matter what we did, market forces precluded profitability. The more totalitarian aspects of communalism which can and do pop up on kibbutzim eventually resulted in my joining the multitudes of others who bailed out of utopia while they still could. The preponderance of those who miss the mythical kibbutz never belonged to one. Gershom Gorenberg's "Club Red" (October 14) typically attributes the demise of the kibbutz to a pervasive preference for comfort among Israelis. As though there were no other factors, as though Israel was obliged to stand still, as though kibbutzniks were shielded from the reverberations of the resounding verdict returned by a nearly global jury composed of socialism's former peers. Times do change, even in the Promised Land.

NACHMAN SPIEGEL
Karmiel, Israel

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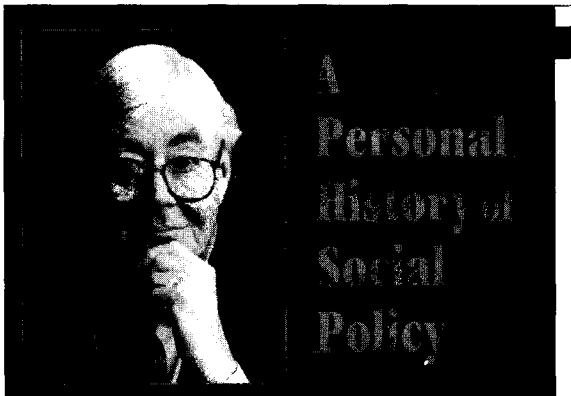

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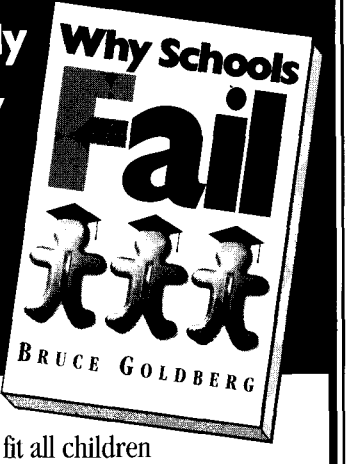

Bruce Goldberg argues that schools today, both public and private, attempt to fit all children into a pseudo-scientific one-size-fits-all system: "The denial of individuality is at the core of the failure of the schools." From Mann, to Piaget, to Hirsch, he says, the attempt to create a scientific theory of education has foundered on the fact of children's individual differences.

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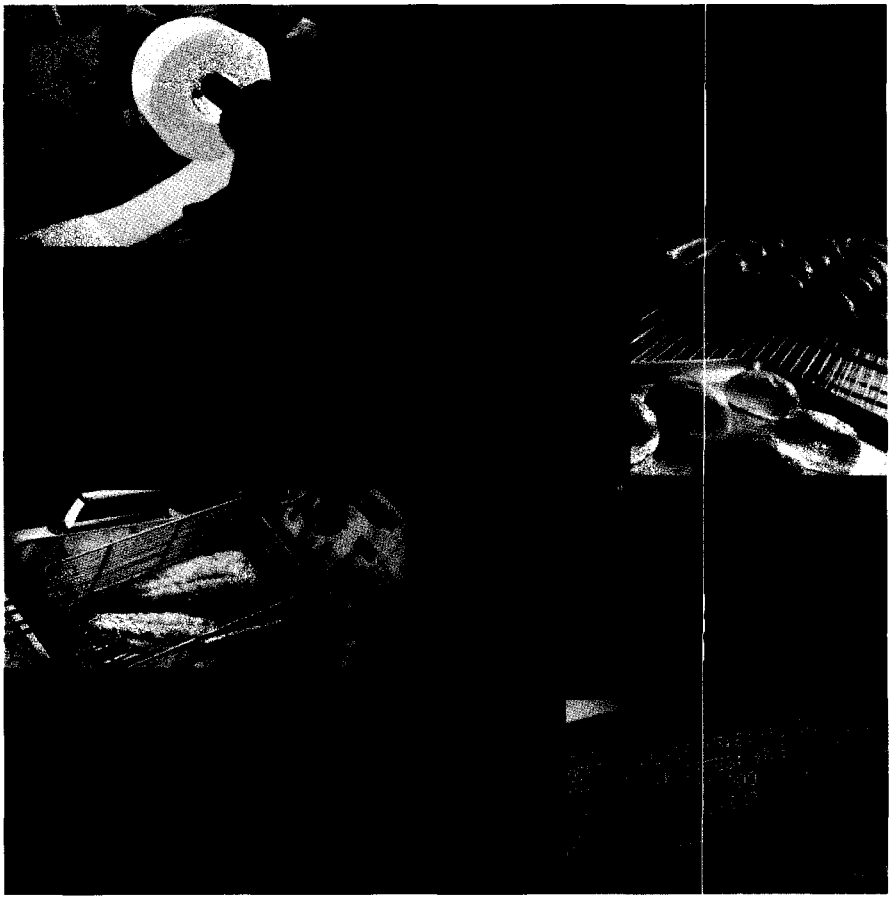

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THE NEW REPUBLIC

NOVEMBER 11, 1996

WHY WE'RE FOR CLINTON-GORE

Does this magazine still believe in Bill Clinton? In 1992 we saw in the governor of Arkansas a candidate who seemed able, through his intellect and breadth of human understanding, to wean his party from the petty dogmas that for a quarter of a century had robbed government action of public trust. Where Bill Clinton has failed during the last four years, notably in health-care reform, and in his acquiescence to genocide in Bosnia, it is because he has subjected neither his empathy nor his wonkery to moral discipline. In health care, this kept him from repudiating a hubristic and insular leftism spawned in his own administration and, for that matter, in his own family; in Bosnia, because he adopted the calculated indifference of America's European allies while continuing to indulge in the rhetoric of justice, he did even more harm than they. Few in America can be confident that a man so eager to please, and so routinely unable to distinguish those with a valid claim on his compassion from those without, will not make similar mistakes again.

But ironically, although Bill Clinton has squandered the personal trust of many who once admired him, he has done much—probably more than any other politician in the last three decades—to restore public trust in government. He has done so by purging the party of activist government of some of its most debilitating pathologies. When Clinton rejected the profligate habits of his own partisans and pursued deficit reduction in the months following his inauguration, he took the most important step in a generation toward freeing liberalism from the stigma of fiscal irresponsibility. That wise and courageous decision has not only helped produce four years of steady economic expansion, it has invested Clinton with the credibility to punish the Republicans for their renewed flirtation with supply-side hallucinations.

Bit by bit, and often sloppily, he worked to restore the credibility of the liberal promise. This president did not fight for the welfare bill he proposed in 1993, and the human costs of that capitulation will be felt for years to come: the Republican-inspired welfare reform bill of 1996 contains more than a little ugliness. But he did commit himself to the radical reform of a welfare system that had fostered deep cynicism about the ethical basis of the Democratic Party's concern for the poor.

Bill Clinton and Al Gore's decision to hitch their political fortunes to free trade—in the form of NAFTA, GATT and the Mexican bailout—against the anachronistic mantras of many in their own party, and the nakedly self-serving maneuverings of some in the other, may go down as one of the most propitious victories of our era. Al Gore's cool dissection of Ross Perot one night on "Larry King Live" had the happy side effect of exposing the demagogue's intellectual fraudulence before a national audience. But more importantly, at a time when disquiet about America's post-cold war purpose was fueling a malignant nationalism, the Clinton administration's forthright defense of free trade bolstered this society's liberal, outward-looking tendencies. The argument over whether Americans, particularly less-educated Americans, have more to fear or to gain from the awesome spread of free economic competition throughout the globe will likely continue for decades to come. But Bill Clinton and Al Gore staved off what would have been a crippling initial defeat.

By themselves, these achievements do not realize the vision of effective, hard-headed, remedial government action that Bill Clinton outlined in his 1992 campaign. That vision—of a responsible, limited government stepping in at key moments to help citizens adapt to an increasingly entrepreneurial society—still remains distant. But it is more sharply defined and more achievable today because Clinton has rid his party of much of the baggage that delegitimized the very concept of activist government. Had he not done so, liberalism would have remained defenseless against a Republican ideology which, in its mania for stripping the public sector of any role, veers ever closer to social Darwinism.

The president has taken other, smaller steps. An assault on the continuing mediocrity of an educational system which ill equips many Americans for work or citizenship stood at the heart of Bill Clinton's 1992 vision, and he has pursued it timidly, if at all. But in the welfare bill, and in smaller initiatives like school uniforms, he has laid the groundwork by insisting that state assistance be conditioned upon, rather than substitute for, high standards of individual conduct. One might imagine

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that, with a more amenable Congress, these principles could serve as the foundation for a program that coupled tough national educational standards, teacher competency testing, increased educational choice and smaller class size, on the one hand, with substantial, targeted federal assistance to children at the greatest disadvantage.

Clinton's efforts to condition public assistance on responsible behavior represent an important start, but now he must wean the less needy off the public treasury as well. Liberals like to frame spending tradeoffs as contests between social programs and defense, but they are obfuscating a basic fact: unless they rein in transfer payments to the middle class, there won't be any discretionary public assistance to offer. What Bill Clinton is ignoring when he wields Medicare as a bludgeon against Bob Dole is that it is his camp that will ultimately pay the heaviest price for evading entitlement reform. The Democrats' demagoguery may win them a few more elections, but, ultimately, they will lose the fiscal flexibility that makes the liberal promise possible.

In 1992 we were confident the president would tackle entitlements. Sadly, his political unwillingness to confront powerful constituencies and his emotional aversion to unpalatable choices have kept him from facing reality. But the Republicans, with their addiction to tax cuts for those at the top, have no more credibility on the question of middle-class sacrifice. And at least Clinton has educated the country through his first deficit reduction that they need not suffer through a recession or lose critical public services (partly because Gore's National Performance Review found considerable government waste). Somewhere in his mind must lurk the fear that unless he addresses entitlements the deficit will start once again to spiral, obviating his greatest historical legacy.

Foreign policy remains more difficult, since Clinton does not really have one. He still seems disinterested in international affairs and warms to it only as an accessory to domestic economic policy (strong-arming Third World countries to buy U.S. products) or domestic politics (televised signing ceremonies between supposedly reconciled enemies, with the president looking on, statesmanlike). His half-hearted and misdirected attack on Iraq strengthened rather than weakened Saddam Hussein. And only an aloof president would leave business to a frequent-flyer legalist like Warren Christopher and a power-shy dreamer like Anthony Lake.

But if Bill Clinton's foreign policy has not always engaged the world with strategic vision, he has at least engaged the world, an important accomplishment at a moment when isolationism runs strong in both parties. Bill Clinton backed assistance for Boris Yeltsin's economic reforms at a time when foreign aid was anathema, and, while we are unimpressed by his indulgence of Moscow's savage war in Chechnya, Russia is hanging on to democracy, thanks in part to his efforts. Furthermore, as a result of Al Gore's delicate maneuvers on weapons dismantlement, the Ukraine and Kazakhstan no longer have nuclear missiles. And, despite Russia's temper tantrums, the Clinton administration has moved steadily, if slowly, toward integrating Poland, Hungary and the Czech Republic into NATO.

In Haiti, Clinton restored a vastly preferable, if not exemplary, government to power, silencing those in Congress who felt the island's suffering should lay no claim on us. He reacted forcefully to China's moves against Taiwan, and, after more than two shameful years of abdication, imposed an unjust peace in Bosnia that is at least better than the unjust war that preceded it. (And even this last-ditch effort was unpopular among the isolationists who wield considerable power in Bob Dole's party.)

While Bill Clinton's foreign policy record is not sterling, it is easy to imagine worse. America does not have an obvious reason to stay engaged, as we did after World War II, yet Clinton chose not to withdraw as dramatically as we did after World War I. And on Russia, Haiti and trade, Bob Dole has curried favor with the GOP's America-firsters. Bill Clinton may yet bow to union pressure not to extend NAFTA to include Chile, and to emasculate the fledgling World Trade Organization. But Bob Dole's surrender to his party's protectionists is more certain still.

Of course, Bill Clinton's now all-but-inevitable reelection may owe more to the behavior of the Gingrich Congress than to his own accomplishments. The Contract with America, it is now clear, had only one signatory, the momentarily ascendant Republicans. The citizenry as a whole never signed on; so the Contract was unenforceable. The 1994 election was not, as its zealous victors imagined and as much of the pundit class agreed, the beginning of a permanent revolution. It was, after all the hoopla, just an isolated event in which several handfuls of extremely right-wing politicians won first-term congressional seats. And when the public saw that these Republican Robespierres, and their tribune Gingrich, intended to dismantle the very idea of the common good, it became clear that many of these first-term members would also be one-term members.

Of course, Bob Dole is not Newt Gingrich. But Dole remains unable, after all these months, to make clear what exactly he would represent were he somehow to triumph on November 5. He can be trusted, he never tires of declaring. But trusted to do what? His years in the Senate provide few encouraging clues. At best, his tenure was workmanlike in the traditional logrolling ways of that institution, sometimes with nasty payback for those who didn't accommodate to the game. Even his two most conventionally touted virtues, his fiscal responsibility (now "exploded," to use the current epithet of choice, by his plan for a 15 percent tax cut) and his character, do not withstand serious scrutiny. Dole's record of legislative favors for powerful and narrow corporate entities should raise at least as many questions about his public ethics as Bill Clinton's various improprieties.

To be sure, it is now evident that the first family has a disturbing tendency to cut corners politically, finan-

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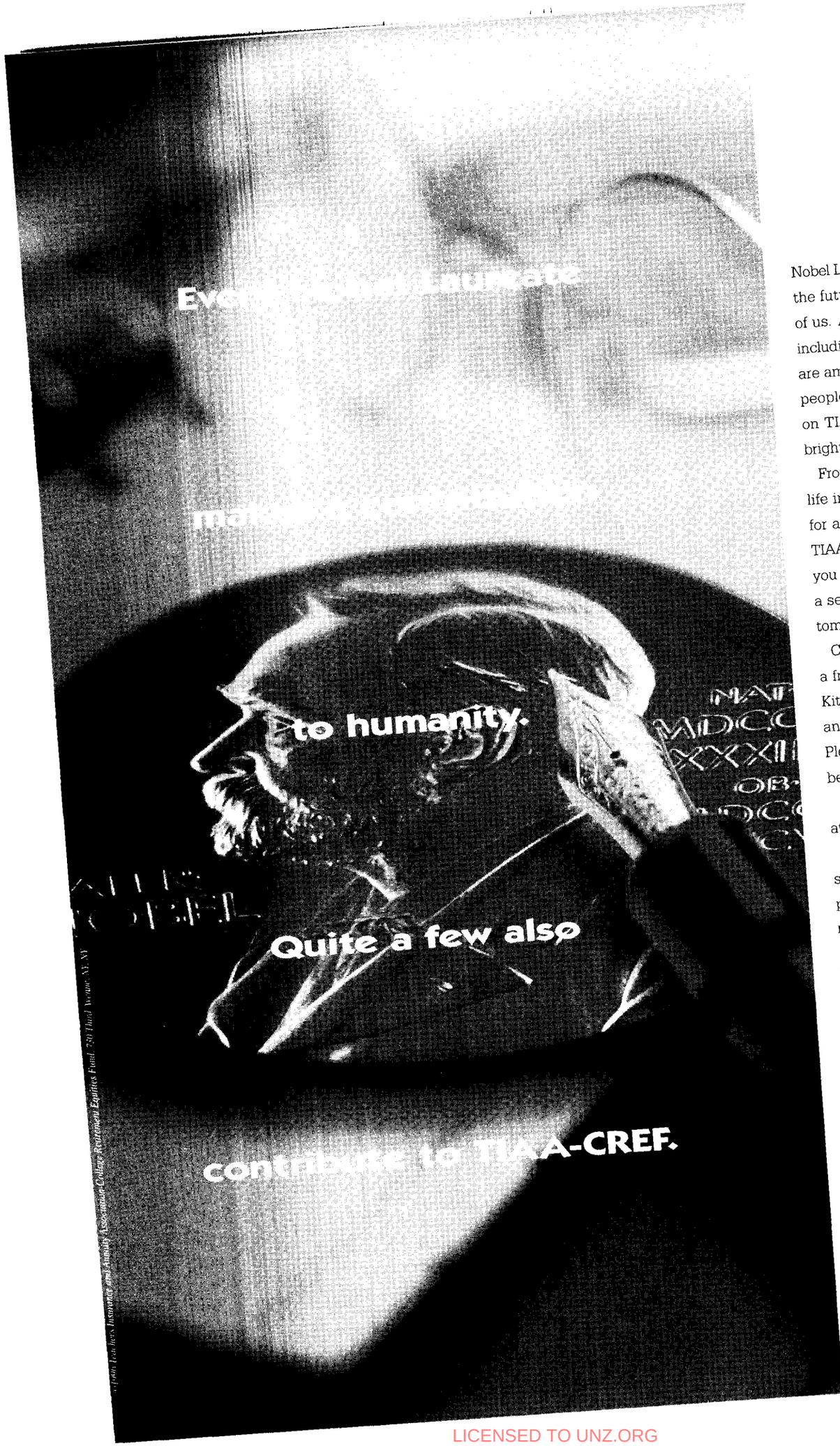

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cially and in their treatment of those they employ (the recent Indonesian imbroglio is a particularly unseemly example). But if Bill Clinton accepted money from self-serving foreign interests, would we rest easy under President Dole because he has spent a career taking money from self-serving domestic ones?

A Dole presidency, one imagines, would devolve into a fierce struggle between the Republican Party's two wings, both ideologically zealous, impervious to empirical evidence and hostile to compromise. The most optimistic scenario is that the Kemp-Whitman faction, which favors fanatical tax cutting and deregulation, would best the Buchanan-Reed camp, which peddles racial and cultural resentment. And to be fair, this is what has happened since the San Diego convention. But the example of the Dole campaign also suggests a leader organizationally incapable of controlling these disparate and militant factions, and without a formidable enough intellect or ideology of his own to effectively harness them. Indeed, almost a year after he began his run for the presidency, Dole's only convincing answer to the question of why he wants to be president is his insistence that he deserves it.

Many things could sink a second Clinton term, the most dangerous being the antics of the old-school liberal barons who would take over Congress. Below class warriors Richard Gephardt and David Bonior, an array of deadly chairmen wait to take over prominent committees. John Dingell, perhaps the crudest anti-intellectual in the group, would resume his persecution of scientists and science as Commerce Committee chairman. Ron Dellums's portfolio would be Defense, about which he cares nothing (unless it is the defense of Cuba). Charles Rangel, the blowhard from New York, would take over Ways and Means, where he would try to revive many of the liberal-sounding tax incentives off which the rich have always gotten richer and the country poorer. Henry Gonzalez, a certified crank, would take over Banking. Detroit's John Conyers would run the Judiciary Committee and spend his days making it harder to lock up criminals.

One safeguard will be the increased role certain to be played by Al Gore, a genuinely serious man of ideas with a view of the future both bolder and more nuanced than any other person in our public life. He will, we hope, increasingly define the nature of a second Clinton term, and his re-election as vice president in 1996 will be a prelude to his campaign for president in the year 2000.

Does this magazine still believe in Bill Clinton? Suffice to say that if we know more than we did in 1992 about his capacity to avoid hard truths, we also know more about his capacity to learn. In important ways, his redefinition of government's purpose after the collapse of the cold war-welfare state consensus has saved activist government from both its enemies and its friends. While we doubt Bill Clinton will address the greater challenges necessary to carry through this redefinition to fruition, he has at least prepared the ground. •

NOTEBOOK

CLUELESS: Americans of all ages will surely cheer this presidential campaign across the finish line, but just imagine the sigh of relief from the nation's high schools. While the Dole campaign has blandly recycled the usual election year scapegoats—bureaucrats, criminals etc.—the Clinton administration has been cultivating a novel middle-class political phobia: teenagers. First there were the attacks on pop culture; then the anxious calls for school uniforms and curfews. Now, in a clear attempt to demoralize the enemy by taking what it holds most sacred, the Clinton administration last week announced an assault on the teenage driver's license. If the Clintonites have their way, youngsters will soon have to pass drug tests before they hit the road. Forget that most teenagers, like most Americans, crash their cars because of alcohol, not drugs. And ignore the fact that since teenagers decide themselves when to apply for a license, and hence, when to face the dreaded plastic cup of the state, it would be a test more of stupidity than habitual substance abuse. More to the point, though: Is there any reason to test teenagers but not their parents? Sixteen-year-olds might be more prone to drive high than their elders, but if probable cause is what the government is after, there are surely better ways to define likely offenders than by age. After all, the feds don't make states test people previously convicted for drug offenses. Adults, of course, would never stand for universal drug testing for driver's licenses; they would see the initiative as an obnoxious waste of their money and time, for a tiny payback. The difference, of course, is that they vote. Still, perhaps this is just another one of Clinton's "cost-free" little initiatives, needless but harmless, too? Well, not when you think about the line you waited in last time you paid a visit to the Department of Motor Vehicles. Imagine standing in that same endless line again, only this time behind a gaggle of surly teens, each one submitting to a drug test administered by those efficiency wizards at the DMV.

REND IT, DON'T MEND IT: The new Congress hasn't even been elected, but liberal antipoverty groups are already working to quietly eviscerate the most worthwhile portions of this year's welfare reform law—those that attempt to replace cash aid with work. The latest target is the law's requirement that a certain fraction of each state's caseload be "engaged in work"—a fraction that gradually rises from 25 percent in 1997 to 50 percent in 2002. "Work," as defined in the law, generally means actual work, in public or private jobs. In a concession to moderates, however, Congress allowed "not more than 20 percent" to be placed in "vocational educational training." The obvious question: 20 percent of what? Congress clearly intended that a fifth *of those required to work*—e.g., a fifth of 50 percent in 2002—

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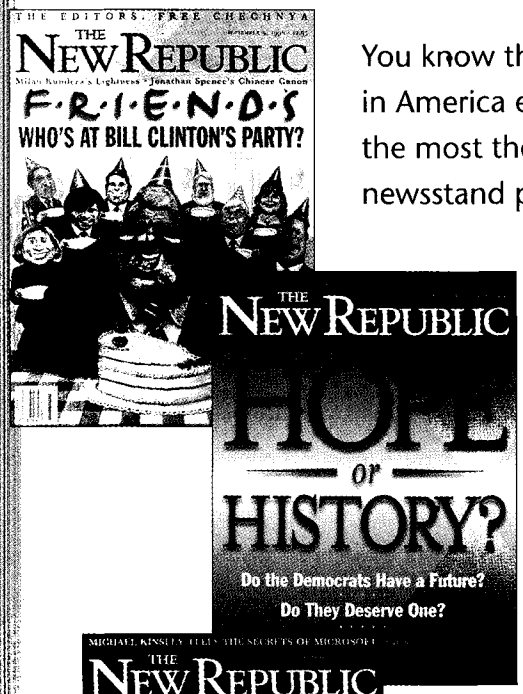

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could be in education programs. But, seizing on a drafting error in the statute, the Center for Law and Social Policy is campaigning to have the "20 percent" figure apply to the entire caseload—which would at least double the education loophole and more or less gut the work requirement. President Clinton's Department of Education is supporting the Center's proposed weakening of the law. Why? Because it wants to maintain the stream of welfare recipients shunted into remedial education courses and training in "basic skills." Never mind that such courses have been shown to have little benefit. (Many recipients do not do well in classrooms, but thrive in a work setting.) Perhaps Republicans have a point when they raise fears about how the Clinton administration, aided by a Democratic Congress, would "fix" welfare reform.

KRISTOLIZED: *The Weekly Standard*'s months of criticizing Bob Dole's campaign strategy have paid off. *The New York Times* dubbed the magazine "iconoclastic," and *The Washington Post* recently fawned that its editor Bill Kristol is "willing to take on his Republican pals." All this for observations such as: "Bob Dole is likely to lose the presidential race." Compare the *Standard* to *Rising Tide*, the Republican National Committee's bimonthly. Both magazines are in complete agreement that the Republican Party is correct on every major policy issue, and thus that the only important political question is how to insure the party's majority status forever. The *Standard* endorses what it regards as effective political strategies and criticizes ineffective ones. That's slightly better than papering over intraparty quarrels, as *Rising Tide* does. But it's not the same as quarreling with the party over substantive policy, which the magazine never does. Kristol, meanwhile, is reveling in his newfound iconoclasm while warning that "we don't want to be self-consciously contrarian, either." No, they don't.

NOT NEWT: It's not just the softer core GOP congressmen who are fleeing the speaker in droves this campaign season. Back home in their districts, even some of Gingrich's most loyal supporters are scrambling for cover. Representatives Mac Collins and Saxby Chambliss, both fellow Georgians, last month told *The Atlanta Journal-Constitution* that they're not Newt, despite voting records that matched the speaker's more than 96 percent of the time. Kansas Representative Sam Brownback, who voted with Gingrich on 93 percent of the bills before the 104th Congress, told *The Kansas City Star*, "I am not a clone of Newt Gingrich. I've run on my own agenda.... I'm not going to be calling him and asking him to come into the state on my behalf." Washington Representative Linda Smith complained to *The Takoma News-Tribune* of an undefined "they" who "are trying to morph me into Newt." The problem, she said, is that "I am an independent"—albeit one who just happened to share 92 percent of his legislative agenda. •

Why Russia is no democracy.

OUT OF THE PAST

By Tim McDaniel

History has many uses. For political actors it is the repository of demons to be destroyed and visions to be fulfilled. For more distant observers, the study of history often gives rise to melancholy reflections on the eternal return of unwelcome cultural patterns, even in periods of profound social and political change. The current conflicts in the Kremlin are as redolent of the old Russia as a Mussorgsky opera, an Akhmatova poem, or Alexei Tolstoy's play about Ivan the Terrible, which, as it happens, Alexsandr Lebed went to see after he was fired as Yeltsin's security chief in mid-October. When Ivan the Terrible, facing boyar opposition, abandoned Moscow and assumed the role of outcast martyr, he won over his people and re-established his autocracy. The redoubtable General Lebed may well re-enact a similar tragedy.

But that is not the Lebed affair's only historical echo. By 1921, Lenin had built up a regime of arbitrary personal power divorced from the people. From 1922 to 1924, while he lay immobilized after a series of strokes, two archetypal creatures of this self-centered system vied for power—Joseph Stalin, a master of intrigue and the center of a dense network of personal connections; and Leon Trotsky, the outspoken former head of the Red Army, full of charisma, not at all a team player—and for these reasons hated by the apparat.

Of course, Anatoly Chubais is no Stalin; and Alexsandr Lebed is not as brilliant as Trotsky. Yet the parallel still holds: the prominence of the shadowy Chubais and the charismatic Lebed is the logical outgrowth, as it was for their communist predecessors, of an enormous political failure. This time around, that failure may leave Russia on the brink of possible disaster once Yeltsin dies.

Yeltsin's actions have never flowed from any kind of commitment to democracy, and they have nurtured neither a democratic culture nor democratic institutions. Rather, his primitive understanding of democracy and capitalism as simply the negation of the Communist past has been matched by an overriding, and sometimes ruthless, commitment to his own political survival. Yeltsin's lack of any real belief in democracy explains both what he has done and what he has not done since he took office. Tossing the popular Lebed out is part of a pattern of political conduct rooted in tactics rather than strategy: set up an archenemy—whether ex-Vice President Aleksandr Rutskoi, ex-

continued on page 20

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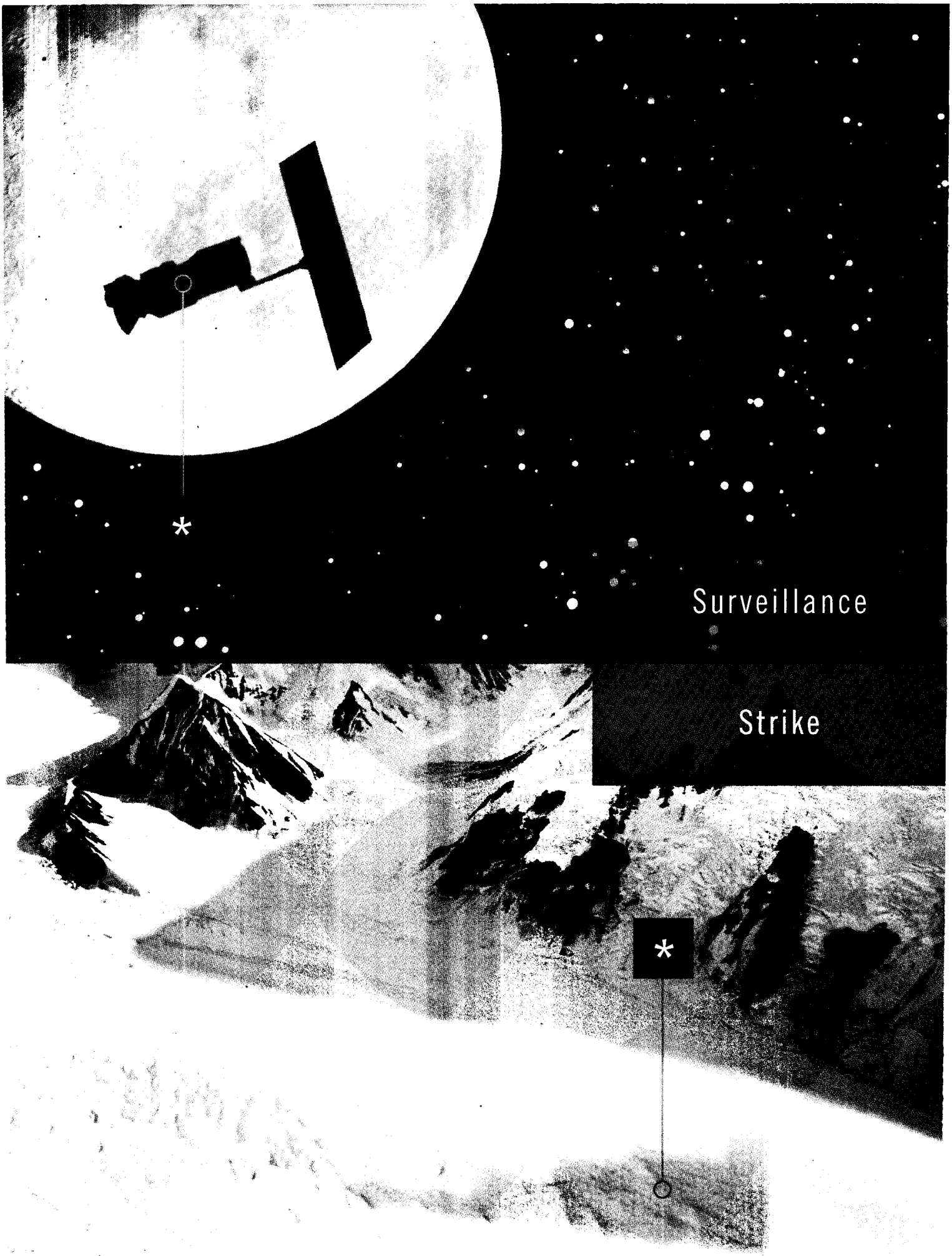

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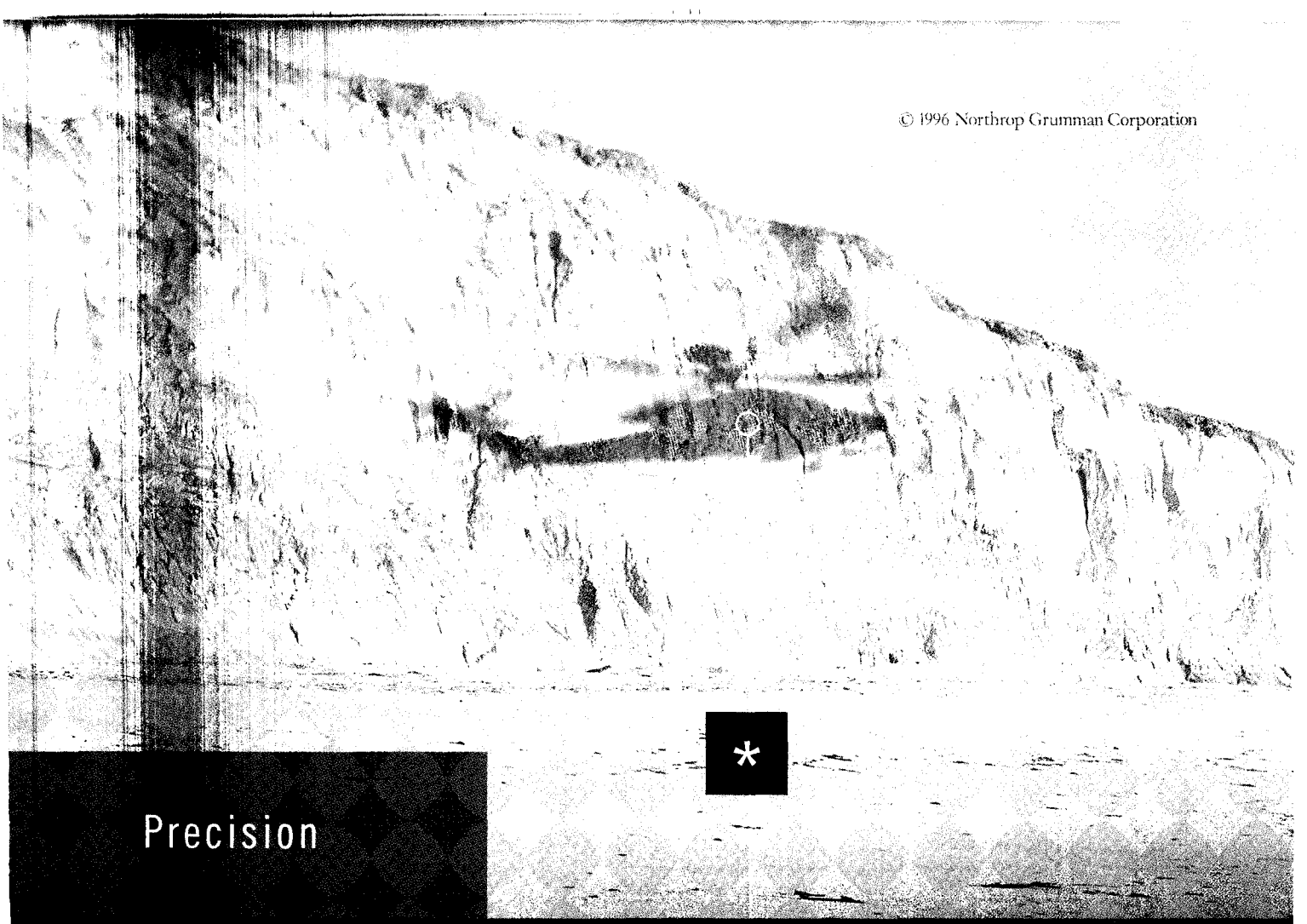

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Speaker of the Parliament Ruslan Khasbulatov or ex-chief of the Security Council Lebed; demonize this enemy as anti-democratic, the representative of dark forces of the past; and expel or destroy him, thus re-affirming one's own "democratic" credentials.

But at least as significant is what Yeltsin has *not* done. In late 1991 and early 1992, leaders of the democratic movement repeatedly suggested establishing new representative political institutions that could supplement the fractious and embattled parliament. Yeltsin ignored them. Rather than ruling by and through parliament and political parties, he preferred, like the last Romanov rulers, to rely on an unstable array of political favorites in Moscow and personal emissaries dispatched throughout the country. He continues to rule by decree, even though the decrees have little force. Since no political institution enjoys a scintilla of legitimacy in contemporary Russia, the government is unable to perform even its most elementary tasks: collecting taxes, paying its own employees or supporting an army. The Soviet-style "dictatorship of the proletariat" has indeed been followed by the withering away of the state.

Operating in close to a political vacuum, Yeltsin follows the logic of personal autocracy as if born to the role, substituting time-honored despotic practices for popular support. His complaint against Lebed was that he was "splitting the team apart," a team that should "work like a fist." But in fact Yeltsin himself has done much to foster disunity, playing one minister off another, scapegoating officials for policy failures, and hiring and firing at will. Chubais himself was previously fired for privatization scandals and then re-appointed when he became useful to Yeltsin's re-election campaign. Now this highly dubious figure, unpopular save among those who profited from his leadership of Russia's voucher privatization, has temporarily eclipsed Lebed, the country's most admired public figure—who himself was originally appointed by Yeltsin for purely utilitarian motives. Just as democracy for Yeltsin is the defeat of his enemies, who are always branded as representatives of the Communist past or proponents of fascism and military dictatorship, so he and his allies are unable to grasp the organizational and moral dimensions of capitalism. Fundamental principles accepted in all advanced industrial countries have no warrant in Russia: for example, the idea that workers should have rights protected by the government; that class relations should be based upon some kind of reciprocity; that property is not simply theft; and that capitalist elites gain legitimacy through their contributions to the larger society.

Yet, despite all this, Russia is not about to fall apart. That's because whatever the continuities in Russian political culture, Russian society has changed enormously. First, in the aftermath of Communism's failure, there is for the first time in the country's modern history remarkably little commitment to a separate Russian path to modernity. This is why the oft-heard parallels to Weimar Germany are superficial: unlike contemporary Russia, Germany had not yet tested its nativistic alternative to "mechanistic" Western society, and German society of the '20s was rife with ideologies and social movements. The Russian people are too world-weary to be tempted by such siren calls—thus their amazing passivity in the face of one calamity after another.

This passivity is also due to a second major change: Russians now know that they cannot rely on this government, which, quite undemocratically, has broken with the long Russian tradition of state paternalism. Having been told since 1991 that they are living through a period of social Darwinism, and that they must take care of themselves, they have learned to do just that. From professors of engineering who grow their own potatoes to mafia groups bartering aluminum for Japanese electronics, Russians have begun to create a society based less on a complex division of labor and more on localized ties. Many people, having found ways to survive and perhaps even prosper, are simply not interested in the palace intrigues of the Kremlin.

Third, and equally significant: for the first time in Russian history there is now a powerful private elite able to protect its position against both the people and a potentially hostile future government. At present, that elite is well represented in Yeltsin's Kremlin, especially through the good offices of Anatoly Chubais. Tsarist officials often vainly hoped that such an elite might emerge to provide social stability. Whatever else Boris Yeltsin has done, he has created the conditions under which these "strong men" can get down to business, and to politics as well. The latest Kremlin tempests probably don't worry them much, either.

There are, then, several sources of stability in contemporary Russia. But this does not mean that Russia is a democracy, even a fledgling one. The Lebed affair clearly demonstrates the decay pervading contemporary Russian politics, based as it is on purely personalized power. If Lebed were to become president, his regime would rest on the same insubstantial foundation, and Russian politics would continue to conjure up gloomy reminders of the country's political past. Were he shrewd enough to realize that the status quo, with its weak and illegitimate state and its capitalists who curse everyone, gives very little hope for the future, new troubles might loom. Like Peter the Great and Stalin before him, he might then attempt a desperate revolution from above that would provide no effective solutions to Russia's endless search for a viable form of modern society—which should remind us that Boris Yeltsin, whatever his flaws, is far from the worst model of ruler in the repository of Russian history.

TIM MCDANIEL is Professor of Sociology at the University of California, San Diego, and the author, most recently, of *The Agony of the Russian Idea* (Princeton University Press).

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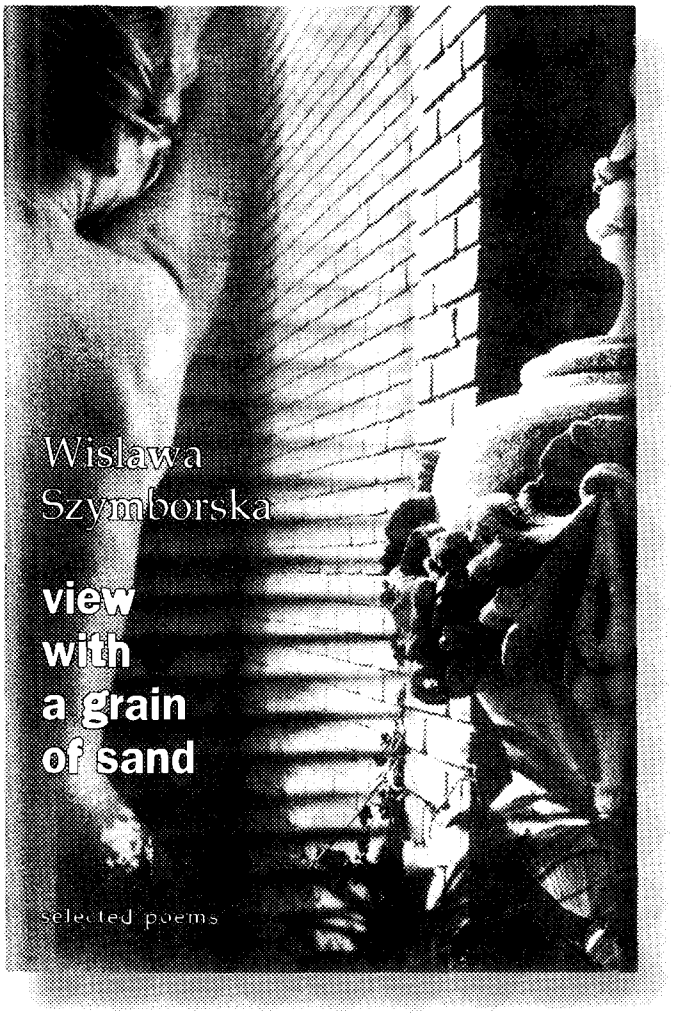

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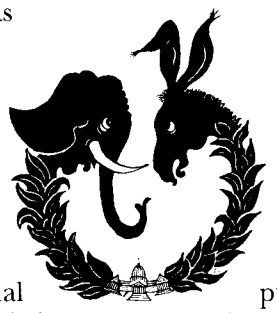
RACE FOR CONGRESS: NEW HAMPSHIRE

MELTDOWN

By John B. Judis

Speaking to supporters on a farm in rural Orford, New Hampshire, Republican gubernatorial candidate Ovide Lamontagne (rhymes with "attain") recounted how his 7-year-old daughter had recently announced her choice for president. "I think maybe we should re-elect Bill Clinton," she said. When her parents explained that Clinton believed in "big government and high taxes," she dutifully recanted. "It was a 7-year-old getting the message," Lamontagne boasted. But he missed the real moral of the story: in New Hampshire this year, Bill Clinton has charmed even the daughter of the state's top Republican candidate.

Since the Civil War, New Hampshire has been the most consistently Republican state east of the Mississippi. Today, its governor, two senators and two congressmen are Republicans. But in this year's election (as in 1992), New Hampshire will likely go for Clinton. More importantly, Democrats lead in the races for governor and senator, and are within striking distance of both congressional seats. Tom Rath, the Republican National Committeeman, thinks Republicans will hold the seats, but he admits, "I can also make a case for the Democrats winning all four." In New Hampshire, that's a minor miracle.



New Hampshire is changing because its people and their work are changing. Once known for its seaport, its textile industry and its farms, New Hampshire's southern tier has become an extension of Massachusetts' Route 128. In the last decade, 800 new software firms have sprung up there. Voters in this populous southern tier resemble those in northern California's Silicon Valley or Raleigh-Durham's Research Triangle. They support women's rights, are suspicious of religious zealotry, and worry about polluted air and streams; they are fiscally conservative (they choose to live in New Hampshire not Massachusetts partly because New Hampshire doesn't have an income or sales tax). Once Republican, they are becoming politically independent. New Hampshire's registered Republicans outnumber Democrats four to three, but by the year 2000 independents will probably outnumber both.

These suburbanites have rejected the traditional conservative Republican formula for winning elections in New Hampshire. This formula, shaped by former governors Meldrim Thomson Jr. and John Sununu and reinforced by the *Manchester Union-Leader*, mixed anti-tax, anti-government Republicanism (dubbed "the New Hampshire way") with a social conservatism that lured erstwhile Democrats opposed to abortion and gun control. But the new voters don't buy it. They might not like taxes, but they do favor spending on education and environmental regulation. And the Christian Coalition gives them the willies.

Lynne Schmidt is a lifelong Republican from Merrimack, a well-to-do suburb of Nashua. She ran this year as a Republican for state representative and lost. But in the general election she is backing Clinton and the Democratic candidates for governor, senator and congressman. Schmidt's disillusionment with the Republican Party began two years ago, when an organized group, linked to the Christian Coalition, took over Merrimack's school board and tried to introduce Creationism and similar innovations into the curriculum. (See "Into the Wilderness," TNR, October 2, 1995.) Says Schmidt, "Two years ago, I told my in-laws Senator Dole is going to be involved with the Christian Coalition. He sold out to the highest bidder." She rejects this year's Republican candidates for Congress and Senate, arguing that "If we remove the Department of Education, education is going to flounder."

Jim Rubens, a successful Republican entrepreneur who won a state Senate seat in 1994, is backing Dole and Lamontagne, but he is also worried about where the national party is headed. Like Schmidt, he doesn't like the Republicans' ties to the religious right. "The real Republican Party isn't the Christian Coalition," he insists. Rubens is just as worried about the congressional Republican record on the environment. "What they did with environmental laws was an egregious mistake," he says. "Americans don't want dirty air and water. People don't necessarily vote directly on environmental issue unless they are from the Sierra Club, but they now have a sense that a [Republican] politician may do something reckless about the things that they hold near and dear."

To make matters worse, the New Hampshire Republican Party is suffering from the same malady that in the past afflicted some state Democratic parties: as moderates have defected, the party's nominating process has been taken over by hard-liners. This year, the party's gubernatorial and senatorial candidates are both right-wing. Lamontagne, who defeated pro-choice Congressman Bill Zeliff in this fall's low-turnout primary, headed the state board of education, where he was a close ally of the Christian right in Merrimack. Bob Smith, the incumbent Republican senator, won the GOP nomination in 1990 over a pro-choice opponent. In his first term, he has gained notice as a dogged defender of the unborn (he brandished a plastic model of a fetus on the Senate floor) and as a sponsor of legislation to limit company liability for toxic waste spills. He lacks Lamontagne's charm and displays at best a crude intelligence. In an appearance before a Rotary Club break-

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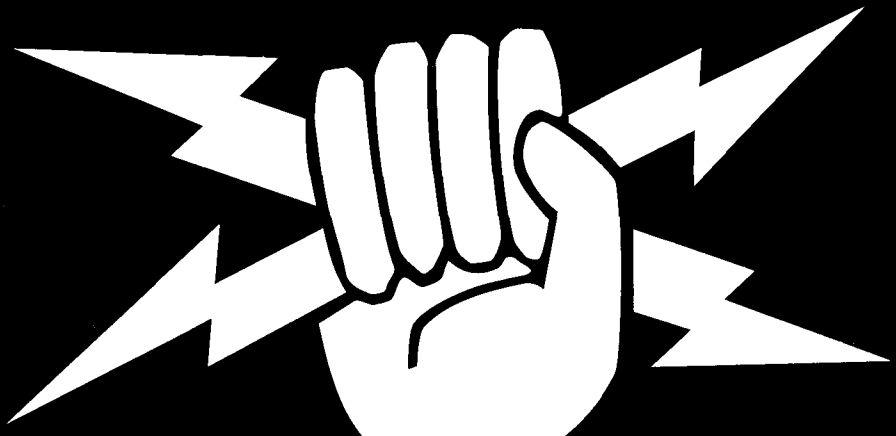

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fast in Bedford, he claimed that by cutting taxes 15 percent, the Republicans could balance the budget in four years. When I asked him how, he had no answer.

While the Republicans have moved right, the Democrats, chastened by past defeat and transformed by the infusion of new arrivals to the state, have nominated moderates. Lamontagne's opponent, state Senator Jean Shaheen, has pledged not to introduce a sales or income tax, but is promising to find new revenues for education. In the Senate race, Smith's opponent, former Congressman Dick Swett, won the primary over an opponent who attacked him for supporting full abortion rights only in the first trimester. Swett, an architect who helps companies design alternative energy systems, is a perfect match for New Hampshire's new high-tech suburban electorate. He eschews the rhetoric of big government but makes a convincing case for using the public sector to expand economic opportunities and to protect the environment. "If the barn burns down," he says, "the community comes in and helps rebuild it, but then everybody goes home and the family gets to farm again. The Republican Party says you must rebuild the barn yourself and run the farm. The Democrats used to say that we'll help you rebuild the farm, so that we can run the farm for you."

Lamontagne has tried to divert debate from education to gambling, charging that Shaheen, who backs video gaming at race tracks to raise revenue, favors "casino gambling." Smith is attacking Swett for taking out-of-state contributions arranged by his father-in-law, Congressman Tom Lantos. "The issue here is out-of-state money," he told the Rotary Club. "It is not Mr. Swett who is raising money here. It is Tom Lantos. If you see people running ads against me, it is from people out of state." (The *Manchester Union-Leader*, which backs Smith, has highlighted the pro-Israel connections of Swett's out-of-state contributors, which come through Lantos, a refugee from Nazi-occupied Hungary.)

The incumbent Republican is also trying to disguise his voting record. During a question-and-answer session in Bedford, Smith, a foe of education spending and environmental regulation, said, "Someone asked me why did you vote against Headstart. It's because you have a bill that also cuts $50 million for an environmental program." I called Smith's office to find out what environmental program that was. I didn't get a response.

When I asked Republican operatives in Washington about New Hampshire, they had a ready rationalization. The Republicans might lose some races, but, ironically, it's because they've won the debate over policy. Democrats are succeeding only by co-opting their stands. In New Hampshire, however, Republicans are not winning the debate, but evading it. While Democrats like Swett and Shaheen try to develop positions that accommodate both the electorate's distrust of government and its desire for government services, the Republicans are running from their records. Even if their candidates do squeak by this November, Republicans in New Hampshire and elsewhere are going to have to rethink what their party stands for. •

CAMPAIGN JOURNAL

FOREIGN OBJECTS

By Michael Lewis

October 17:

The great connoisseur Bernard Berenson understood that the surest way to attribute a painting was to study its seemingly insignificant details. The Italian Renaissance painter was more likely to express his idiosyncrasies when painting, say, the Virgin's toenails than when painting, say, the Virgin's smile. The equivalent of the Virgin's toenails here in San Diego are the signs in the media center after the debate. They bob up and down over the heads of the spin doctors like the flags over golf holes to call attention to the people beneath them. The spinners' names—Scott Reed, Mike McCurry, Laura Tyson—are printed on them, and they would hardly be worth mentioning except that they betray so clearly the different styles of the two campaigns.

In Hartford ten days ago the Dole spinners merely stood around, hoping to be recognized by journalists, until panic set in. "They've got signs; they've got signs," a Dole staffer hissed before running back into the Dole offices to grab a few signs they could raise over the spinners' heads. Here at the second debate, the Dole campaign turned up with their own small square (blue) signs, near-perfect imitations of the Clinton campaign's (pink) Hartford signs. But as usual the Clinton campaign stays one step ahead: now they have dramatic prism-shaped signs, two-feet long. It's as if the Clinton people knew that the Dole people were going to copy

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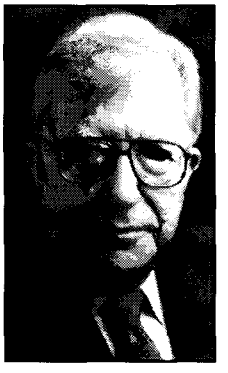
Where We Stand

By Albert Shanker, President
American Federation of Teachers

"We'd Love to Help, But..."

One of the big myths about vouchers is that they will allow poor students to have exactly the same educational opportunities as wealthy ones. According to this myth, a little girl or boy from far Southeast Washington, D.C., will be able to go to Sidwell Friends, just like Chelsea Clinton, or to one of the other fancy schools attended by the children of Washington bigwigs, both Republican and Democrat. That's not the way things work. A story from New York City illustrates what would really happen.

When New York City schools opened this fall and found that, in order to fit everybody in, classes would have to be held in hallways, closets, and washrooms, Catholic and other religious schools came forward to offer places for some of the excess students. So did a number of the city's private schools. The private school offer was described in a *New York Post* article, which carried the headline, "Private Schools to Aid City Students: We Can Help." But, according to a column in the *New York Observer* by Sarah Friedman ("Headmasters Scratch Chins: We'd Love to Help, But...," September 30, 1996), this gracious gesture was quickly followed by disclaimers and excuses from the private schools in question.



Public schools must accept everyone who shows up.

One of the reasons the private schools gave for their retreat was space. The *New York Post* quotes one headmaster as saying that "there might be six empty seats in the high school but the whole idea would involve 'a lot of complications for very little help.'" Another school head told Friedman that he would be "delighted to take students off the city's hands" if he had the space. Unfortunately, he already had 357 students, with seats for only 350. A private school admissions officer who did not want her name used said that, in fact, there are never any empty seats:

> This offer to take kids if there's space is an absurd non-offer. There's never space at first- and second-tier schools. Year after year, we send out rejection letters and compile long waiting lists.

Public schools must accept everyone who shows up, no matter how overcrowded they are, and shoehorn the students in somewhere. Private schools do not have to do that—so why should they? A private school might even admit a smaller class than necessary if, as one former teacher said, it wanted to boost its reputation for exclusivity. Will policies like these change if vouchers become available for private schools? There is no reason to think so.

Another explanation for the private schools' apparent reluctance to admit public school students was high academic standards. One of the headmasters to whom Friedman spoke put it mainly in terms of the children's welfare: "It would have to be right for the child academically. It's a challenging admissions process. For the more competitive schools, you wouldn't be doing anybody any favors by lowering the standards. It wouldn't be good for the child to be in over his head." Another was more direct: "We have high admission standards that are not going to change." But their messages were the same: These public school kids would be unlikely to make the grade.

Even if a child were qualified, it would be difficult and expensive to demonstrate the fact. Friedman points out that it costs $210 just to take the entrance test most of these schools require, and she quotes one parent who used up her entire two-week vacation jumping through the hoops necessary to get her child into a private school—things like "the school tour, the parent interview, the child interview, the child group interview."

Then there's the private schools' concern with making sure that an applicant fits in. The headmasters Friedman spoke to seemed to think that "diversity" could be a plus. However, an alumnus of one of the private schools had another take on that question. Private schools, he said, are "still about WASPy traditions and making lifelong connections, and letting in a bunch of public school kids doesn't exactly foster that." One of the parents Friedman interviewed expressed an even more typical objection:

> A girl got raped in a public school in Bushwick, Brooklyn, last week, and didn't a boy just get killed in one? There's a reason why we spend all this money to put our kids in private school, and there's a reason we want to stay far, far away from anything having to do with public schools.

Do views like the private school grad's and the parent's affect a school's admission policy? Given the fact that private schools depend for their existence on keeping the good will of parents and alumni, you'd better believe it.

The politicians who are selling the idea of vouchers say that vouchers will allow poor kids to go to elite schools like the one the President's daughter attends. Undoubtedly a few will be able to. But most voucher students will find places in the private schools that are not chosen by students who can go elsewhere or in schools created instantly in order to take advantage of vouchers.

Mr. Shanker's comments appear in this ad under the auspices of the American Federation of Teachers. Reader correspondence is invited. Address your letters to Mr. Shanker at the AFT, 555 New Jersey Avenue, N.W., Washington, D.C. 20001. © 1996 by Albert Shanker.

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them and planned accordingly.

When the debate ends and the spinners appear in the media center, I am behind one of the Clinton signs holding the Sony Digital Super SteadyShot Handycam DCR-VX1000 given to me by "Nightline." Normally I would relax after the debate, but the Handycam's magical force field keeps me moving until the place has emptied. I follow it like a dowser with a divining rod and soon find myself staring up at a sign: "Dole Personnel Only/No Media Allowed." Here is the private room where the Dole spinners watched the debate. The Handycam barely pauses before marching me inside. In the viewfinder, I see two dozen empty black swivel chairs all jammed together around the television. Otherwise the room looks as if a tropical storm has just passed through. The floor is littered with a disgusting mixture of papers and sandwich shards. The Handycam examines the refuse for the briefest moment before it lights on something truly interesting: a stack of leftover Xeroxes. Clearly they were passed around to the Dole spinners so they would know precisely what to say to reporters. It consists of six bulleted points:

• "We won. Not even close. Dole was loose and Clinton uptight, smug and bristling with contempt. Dole rocks Clinton on ethics, his Medicare tactics, trial lawyers, defense cuts, tax increases, and so many issues. Dole was in charge. Clinton in retreat."

• "This is a real race. A real race in California, and a real race nationwide. This was a brilliant performance by Dole, a passionate performance, a humorous performance. This is a new race."

And so on.

A few minutes later, thanks to the miracle of modern technology, I am back in Spin Alley during the debate, watching the Dole spinners in action. The first face in my viewfinder is George Shultz's. "I think Senator Dole was on a roll when he came here, and he's really rolling now," he says, his face pressed right up against the lens. "If you thought he had lost the debate," asks the Handycam, "would you be willing to say that?" "Sure, but I don't have to because he clearly ran away with it."

Shultz vanishes as suddenly as he appeared and is replaced by a man under a blue Dole sign that reads "Michael Antonovich." "There's panic on the Clinton side!" this man jeers before insisting, like Shultz, that Dole ran away with the debate.

Soon I've seen enough to know that these people were sticking pretty closely to the memo in my hand. The Handycam and I are pulled toward a stack of papers. Faxes! To Haley Barbour! Actually, they are just Haley Barbour's cover sheets. But alongside them in what looks suspiciously like Haley Barbour's handwriting is a pad of scribbled notes. It turns out to be a running commentary on the debate—and a rough draft for the memo. "CNN-*USA TODAY*" is written across the top of the first page. "10/6: -21; 10/16: -9." Poll data. What's interesting about the writer's clear attempt to boost his own spirits is its implicit admission: eleven days ago no Republican ever admitted that Dole was down by 21 points. "Dole opens well," the author goes on to write. "Good humor, warm. Not a hard sell at all." Many times since January I have felt bad for Dole, who seems driven by some desire to prove he'll never be president. Now I almost feel bad for his campaign. Almost.

A thin blue curtain taped between silver poles separates the Dole people from the Clinton people. The Handycam tears the curtain from its supports and plunges into the inner sanctum of the leader of the Free World. But the room has already been cleaned! One campaign is being run by criminals who deep down want to be caught; the other by criminals who sincerely don't. The lone scrap of paper on the floor reads "'Worst Economy In A Century'—Including Great Depression???," referring to one of the less plausible claims made by Dole during the debate. The Handycam nosedives into the Clinton trashbasket to see what else might have been left behind when suddenly a shrill reproach pulls it up short.

"Excuse me, what are you doing in here?"

"I was supposed to meet George here for drinks," I say. "He's long gone," she says, then waits quietly until I leave. I have found that whenever I am caught where I shouldn't be in the Clinton campaign I only need to say in a casual, familiar tone that I am looking for George Stephanopoulos and I am immediately released.

All around me in the empty media room are televisions replaying the debate. But there's no point watching other people's television show when you can watch your own. I retire and review the rest of the Handycam's tape. On it I am able to discern another major difference between the two campaigns. Time and again the Clinton spinners create the illusion that their campaign has risen above the level of a crude sales pitch. They actually praise Dole for his performance. They carry in their palms tiny plastic tops, to show you that they know how silly and mendacious spinning is. The effect of their irony is to undermine not only their own spinning but the far more necessary spinning of the Dole campaign, which is now entirely dependent on spin to persuade the world that their guy won the debate.

The Clinton campaign is beginning to grapple with the voters' need to feel that they are not being sold anything. Indeed, one of the odder aspects of our current politics is that even though campaigns are deploying ever more sophisticated marketing techniques—many of them pilfered from Madison Avenue—the customers want ever less to do with the product.

October 18:

It's hard to say whether either candidate is running for president any longer or just pretending to while actually focusing on congressional races. After the debate Dole remains in California and delivers what is billed by the Dole campaign as "a major policy address." Major policy addresses occur at regular intervals to stir the reporters' juices and make them feel like something important is happening, which it isn't. Today Dole just

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wants to reiterate his commitment to keeping Mexicans in Mexico. Like much of Dole's rapidly expanding agenda, his outrage about illegal immigration is not truly his own. Like Pat Buchanan, Dole attempts to paint his opponent as the patron saint of illegal immigrants. The trouble is that, since pretty much everyone is against illegal immigration, all that's left is the rhetorical contest. Buchanan can win this because even if he has no novel policies to offer, he genuinely is a lot angrier about the problem than just about anyone you know.

While Dole rails meekly in Riverside I am headed south to Mexico. A young reporter with the Associated Press named Dana Calvo has agreed to take me to the place I've wanted to visit for months. In late March when the primaries came to California I followed Pat Buchanan to the fourteen-mile fence that runs along the border between California and Mexico. "The Buchanan fence," Buchanan calls it, though nowadays just about everyone in elective office including Dole and Clinton has visited the same spot and claimed credit for the thing. Back in March, though, it was mainly Buchanan's issue. He stood beside the fence while hordes of television cameramen pushed and shoved to film him against the background of Mexico and the Mexicans whose legs dangled over the levee across the border. At the time I wondered what on earth these people thought the *gringos* were up to. Tonight I am going to find out.

On the way Dana gives me a bit of background, which is probably boring to anyone who knows anything about the subject but is interesting to me. I didn't know, for instance, that since January the Border Patrol has been nabbing illegals at a rate of 55,000 a month. Nor did I know that the main consequence of beefing up the Border Patrol at Tijuana, and cramming lots of electronic surveillance into the landscape, is to shift the thrust of activity east, toward Arizona. There was a time not long ago when Mexicans would gather in big crowds at Tijuana and, in a strategy well-known to anyone who has played kick-the-can, rush the border simultaneously. The few who got through justified the many who got caught. These days they employ the same tactic but fifty miles east.

At length we arrive on the levee facing the Buchanan fence. It is built on a pile of dust and loose rocks and overlooks on one side the Tijuana offices of the ruling political party and on the other a tan concrete gully maybe 100 yards across. Dana points to the thin channel a few feet wide that bisects the gully and says, "That's where Mexico ends and the United States begins." Facing us from the other side of that gully are the headlights of the U.S. Border Patrol trucks.

But, late as it is, there remains a crowd which looks pretty much like the crowd that gazed across at Buchanan in broad daylight. Dozens of young Mexican men sit dangling their legs over the levee staring into the headlights and beyond them at the Buchanan fence. Before we have a chance to decide which way to turn we are met by three stragglers, one of whom is a small bearded man with a black duffel bag of the sort airlines are forever misplacing. What happens next must be taken with a grain of salt, since I was scribbling in the dark not the man's exact words but the man's words as Dana translated them.

The small bearded man explains he's making a dash for it tonight. He's come up from southern Mexico for just this purpose—he's 32, has a wife and two children and believes he can find a job picking crops in California. "I know it is hard work," he says. "But it pays well." In his bag he carries a blanket but no water and no money. He has been caught by the Border Patrol each of the last eight nights but reckons it is better to be caught here than to die in the desert to the east. "It is more efficient this way. They catch me and hold me for twenty minutes and then let me go." There was a time when he might have hired a guide to escort him, but since the beefing up of the Border Patrol the going rate for guides has more than doubled, from $300 to $700.

As we speak a thuggish young man in a sleeveless shirt sets rubber tires on fire and rolls them into the concrete gully. The idea is that the U.S. Border Patrol will become so consumed with fire extinguishing that the Mexicans will have time to dash across and scale the Buchanan fence. (It is easily climbed.) If that doesn't work they will wait until dawn. "Dawn is the best time to cross," the bearded man explains. "The Border Patrol officers play Nintendo and Game Boys in their cars and by dawn they often have fallen asleep."

The man, I now notice, is wearing a Harley Davidson sweatshirt that says, "Made in the U.S.A." I ask him if he has seen politicians on the other side turn up with hordes of cameras to defend the border. He has. "They're just doing their jobs," he says, "making more and more laws." And it's true. Not three weeks ago Congress passed a bill adding 5,000 men to the Border Patrol and approving the funds to add two more tiers to the Buchanan fence. Nevertheless, the man explains, the crossing will become much easier after the election. "November 5th is a very important night," he says. The night after the next president is chosen, the thinking here goes, the Border Patrol will dwindle and everyone will get across.

Another burning tire is rolled into the gully; Dana is getting a bit tense. Interviewing prospective illegal immigrants in the dead of night is as fraught as interviewing vice presidential candidates. I have time for one more question, she says, before we should leave. "Do you know the man inside that car?" I ask, pointing to the nearest Border Patrol vehicle. The men shake their heads. "He's bald and he looks Puerto Rican," one says. "Do you even have a nickname for him?" I ask. "Motherfucker," he says.

On the way home Dana points out that the man with the black duffel bag could make good money running drugs, but he has chosen instead to risk his life looking for hard, honest work. Does anyone doubt that if Pat Buchanan were Mexican he'd be one of the first across the border? Does anyone doubt that to say this is a compliment? •

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An Agenda for a Second Term

Target practice

One thing everybody agrees on is that the severe, concentrated poverty that exists in many city neighborhoods constitutes a terrible problem that the national government ought to address. Even anti-government Republicans don't deny that there is a crisis or that there should be some national policy for solving it: go back and read Newt Gingrich's quasi-inaugural address in 1995, where he identifies healing urban ghettos as his chief concern.

Within the Democratic Party, there is a deep, long-standing division over how to address the problems of the ghettos. It isn't so much over what to do as over strategy and politics. The two sides in the dispute might be called the Universalists and the Targeters.

The Universalists, of whom the most prominent example is William Julius Wilson, believe that any government program whose announced purpose is to help poor black people has almost no chance of being enacted and, if it is enacted, almost no chance of long-term survival. Universalists want programs that help the poor to be contained (to some extent camouflaged) within programs to help the middle class, because then they'll be popular, like Social Security and Medicare. Targeters, on the other hand, want much smaller programs aimed directly at those in greatest need.

Social policy during the first Clinton term can best be understood as a triumph not of Old Democrats or big-government liberals, but of Universalists. Every major initiative was an attempt to give programs for the poor a chance of surviving by giving them the coloration of middle-class entitlements, or at least middle-class values. The health-care plan was a Universalist solution to the problem of getting medical services to the uninsured. Welfare reform, before Clinton lost control of it, was an increase in job training and other social services for the poor, concealed within a benefit cut-off that would win over the middle class. The one exception, and the administration's sole targeted anti-poverty program, Empowerment Zones, doesn't really count, because it was the brainchild of George Bush and Jack Kemp after the 1992 Los Angeles riots and was pushed by Clinton in 1993 only because it could be hidden within a budget bill.

Universalism has two big drawbacks: it makes every policy intervention much bigger and more expensive than it would be if it were targeted, and it gives programs a disingenuous, Trojan-horse quality. For those reasons, Universalism hasn't been the savvy political masterstroke that its proponents imagined it would be. At a time of suspicion of government and concern about budget deficits, the big Universalist programs didn't pass, and the small ones that did pass, like Americorps, were subjected to the same kind of conservative attacks that the explicit anti-poverty programs of the 1960s and '70s used to draw.

What Clinton is doing in the 1996 campaign is, in effect, demonstrating that he has converted from Universalist to Targeter. He has rhetorically forsworn big government, but he is always proposing small new government initiatives with the mission of solving some highly specific problem. What he hasn't done is propose any targeted anti-poverty programs, and, as long as he is having daily meetings with pollsters, he won't. But at the outset of his second term, he should.

If done right, targeted anti-poverty programs are not only relatively inexpensive, they have some of the virtue of the "Powell Doctrine" in military affairs: if the missions are carefully selected with an eye to high probability of success, they can induce the public to begin to trust a whole area of government again. New programs that have tight quality control and concrete, low-concept purposes like providing day care and safe, decent housing can, if done right, produce tangible, inarguable and photographable results.

There is something deeply corrosive to the national spirit about everybody knowing something is our worst domestic problem, while politicians are unable to talk about it straightforwardly or propose common-sense solutions to it. And, the national spirit aside, nobody should have to live the way that people in ghettos do. Targeting is the best way for President Clinton to ameliorate a situation that must torment him. Right now, with Universalism out of the question, it's the most politically possible way, too.

NICHOLAS LEMANN is national correspondent for the *Atlantic Monthly*.

Telltale

Here's a proposal likely to gladden the president's heart: revisit gays in the military. I say this not out of some sick sense of humor, but merely because the persecution of loyal, patriotic Americans for no good reason is one of the most indefensible policies our government now pursues. As commander-in-chief, Clinton is directly responsible for this situation—and not simply because he actually promised to change it.

The trouble is, of course, he did change it—for the worse. "Don't Ask, Don't Tell" has proven to be even more vicious than its predecessor. Here's one statistic you haven't heard much about these last four years: under Clinton, the number of people being thrown out of the military for sexual orientation, as a proportion of all servicemembers, has *risen* some 20 percent. In the last year alone, the raw numbers jumped 21 percent. In the Air Force, the numbers have more than *doubled* under Clinton.

Virtually every part of the "Don't Ask, Don't Tell" policy is openly violated. Witch-hunts are still common—twenty-eight last year, as recorded by the Servicemembers Legal Defense Network (SLDN), the only group that defends the people involved. In one case in Sardegna, Italy, sixty sailors were investigated. In another case, military snoops asked a young child if her civilian father was gay and involved with a servicemember; in another, a military doctor turned a soldier in after he sought confidential medical advice. Several cases have been recorded of servicewomen complaining about rape or sexual harassment only to become the target of investigation themselves—for lesbianism. Indeed, women now represent 21 percent of discharges, 8 percent more than their proportion in the military would suggest. The policy has gone from being simply a tool to persecute gays to one by which rogue commanders can vent their hostility to women in their ranks.

Whatever you think of the policy, it should at least be enforced properly. SLDN has recorded over 700 separate clear violations in the first two full years of implementation—and that's probably less than the total number. The president need not revisit the policy itself; he need only make it clear by a memorandum and a statement from

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the Secretary of Defense that violations of it will be taken seriously. Commanders found guilty of asking, pursuing or harassing gay (and, often, straight) servicemembers should know they will be disciplined or fired; people who are thrown out under circumstances that violate "Don't Ask, Don't Tell" should be reinstated. To demonstrate its seriousness, the Justice Department should refuse to represent the military in courts until the policy is fairly enforced. This is more than simply a matter of civil rights. It's a matter of whether or not the military is obliged to enforce the rules the civilian branch sets out for them. A re-elected commander-in-chief should insist that they are.

ANDREW SULLIVAN

Good chemistry

Oddly enough, the importance of President Clinton's getting the Chemical Weapons Convention ratified has relatively little to do with chemical weapons. True, chemical weapons are bad—bad enough to kill a few thousand people in a single act of terrorism. But there are three other, bigger reasons why Clinton should work hard to push the CWC through the Senate.

The first reason is biological weapons. They are easier to make than nuclear weapons and roughly as devastating. A low-tech bio-toxin like anthrax could kill half a million people in a single attack. Preventing such a thing will take a treaty that is at least as tough as the Chemical Weapons Convention. Like the CWC, it would have to expose member states to inspection by an international authority on short notice and levy sanctions both against violators and against states that don't join in the first place.

The international movement toward a serious biological weapons regime has only a faint pulse, and death will likely ensue if the CWC goes down. If, on the other hand, the CWC passes American muster and becomes a truly global institution, it will provide not only crucial precedent, but an organizational infrastructure onto which a new biological weapons convention could be grafted.

The second reason to ratify the CWC needs no introduction: nuclear weapons. Most current means of forestalling nuclear disaster, such as arms agreements with Russia and research on missile defense, are almost comically ill-suited to the nuclear threat of the future: terrorists driving a Dodge Caravan. Nuclear terrorism, like biological and chemical terrorism, is best thwarted via an international regime that lets the United States (for example) demand inspections of suspected weapons factories abroad. A good nuclear weapons convention would be messier than the CWC, since it would have to acknowledge that some nations have—and some *should* have—nuclear weapons. Still, taking the CWC as a rough model would be a good starting point.

Of course the U.S. would be subject to inspections under the CWC, just like everyone else. That's how these things work. Which brings us to the final reason to make a big push for the CWC: to confront the paleo-nationalist sovereignty fanatics head on.

Membership in any meaningful multilateral institution carries costs. With NATO, one cost is our commitment to defend western Europe against attack. With the World Trade Organization, one cost is the decisions that go against us (though so far the WTO arbitration mechanism has mostly helped us). With the United Nations, one cost is anti-American rants in the General Assembly. An emerging great divide in American politics is between people who tend to see such costs as worth the benefits (Clinton, George Bush, Bob Dole before he started running for president) and people who don't (Ross Perot, Pat Buchanan, Fred Flintstone). Clinton and other internationalist politicians often duck the cost-benefit analysis in their public utterances. Rather than acknowledge the costs, they disingenuously minimize them or dismiss them entirely. It would be nice for Clinton to clarify the terms of debate—to honestly explain why, in the modern world, national self-interest often implies forms of international cooperation that, yes, bring real burdens and constraints. The eminently defensible Chemical Weapons Convention is a fine opportunity.

ROBERT WRIGHT

Welfare check

The president who signed the 1996 welfare legislation promises that after the election he will fix the bill that he allowed to become law. But fixing it will be much more difficult and will take much longer than its ambivalent supporters would have us believe.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is a terrible law. The president himself has singled out the immigration and Food Stamps provisions—which deny benefits to most legal immigrants and cut Food Stamps across the board—as especially egregious. These provisions could be fixed by restoring the cuts and exempting more categories of immigrants, but that would mean reversing most of the budget savings of the bill at a time when all parties are committed to balancing the budget.

The parts of the law dealing directly with welfare will be even harder to fix. The law abolishes the AFDC program, which guaranteed cash assistance at levels set by states to needy children and provided federal matching money. The old law was nothing to be proud of: it provided few incentives for work or parental responsibility, or for families to get off the rolls rather than get locked into dependency. But the new law goes much further than the necessary sensible reforms. It abdicates federal responsibility for needy children by abolishing any entitlement to benefits or services, while mandating tough work requirements and five-year lifetime limits.

Some states, perhaps many, will use their block grants for creative and innovative approaches to providing work opportunities for adults and services for children—at least in the short run. Some states will support parents in their jobs and make sure their children are safe and adequately supervised. But all the political and financial incentives are for states to cut assistance, to impose time limits shorter than five years, to meet the work requirements without spending any money, to shift responsibilities to local governments and private contractors, and to use the block grant funds for more politically popular programs. Since no state wants to be known for providing substantially more generous assistance than its neighbors, it would be extremely surprising if, over the long run, states did not become stingier. And, given the political momentum for abolishing the entitlement and for preserving states' flexibility, there is no reason to think Congress will intervene.

Is there anything to be done? The first obligation is to make sure the public understands exactly what the reform will lead to. The provisions in the law for public accountability, financial and otherwise, could be strengthened. If Congress fails to do so, private

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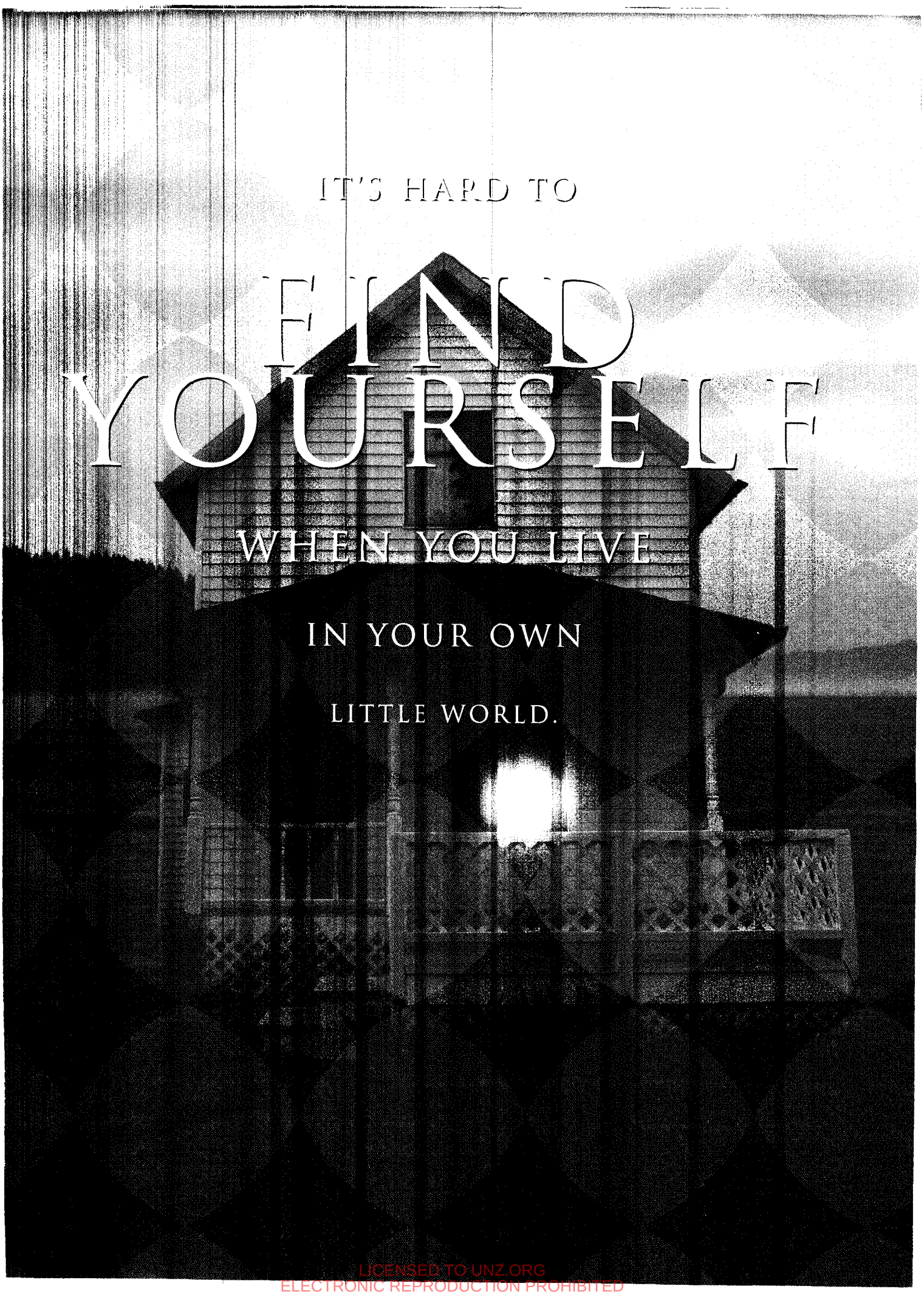

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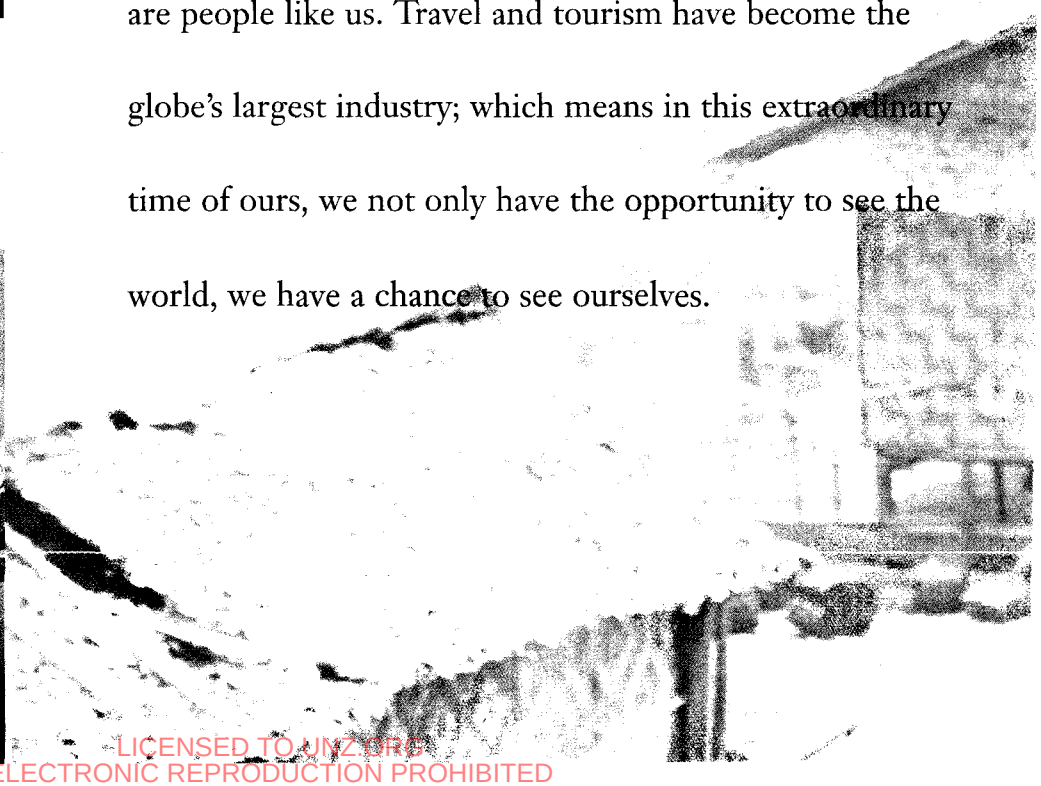

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watchdog groups will have to fill the vacuum. A second need is to mobilize businesses and communities to develop jobs, as the president has pledged to do, and to provide training and support for low-income working parents. Perhaps the president can follow through on his pledge and beseech the private sector to support former welfare recipients in their search for jobs. Still, there are likely to be many parents who cannot or will not make it in the world of requirements and temporary assistance. I predict we will see considerable suffering, especially in high-unemployment areas of the cities, with children in unsafe living conditions, poorly cared for by overwrought or overwhelmed parents. I would like nothing better than to be proven wrong.

MARY JO BANE, former Assistant Secretary for Children and Families in the Health and Human Services Department, resigned on September 28.

Egyptology

Bill Clinton has likely divined the truth by now: he doesn't need much of a foreign policy. He is the first post-imperial president for a post-imperial society. We have little taste for burden abroad, we rush here and there, now and again, but without much conviction. In his boredom with foreign places, Clinton holds up a mirror for his time. He blew with the wind. He was forced into Haiti and Bosnia and out of Somalia; he hitched a ride on Yitzhak Rabin's coattails. He pretended to be containing Iran and Iraq but left the affairs of the Gulf alone for the most part. It was enough; that was all that the nation wanted.

In Clinton's next term, American diplomacy will have to redeem its stewardship of the peace between Israel and the Arabs. Egypt would be a good place to begin. We have a quarter-century of involvement and treasure there, but a terrible anti-Americanism has seized that land. It grips Islamists and secularists alike and is powerful enough that the state has picked it up and made it its own. It is rolled together, this anti-Americanism, with an unrelenting animus toward Israel, toward any kind of accommodation and cultural traffic with the Zionist enemy. Egyptians are bent on taking back the peace they made with Israel a generation ago, on emptying it of what little content and force and legitimacy it ever had. Unmonitored, Egypt campaigns against *tatbi* (normalization) with Israel and rails against those in the Arab world who reject the rancor (Jordan, Oman, Qatar). In an otherwise heavily censored Egyptian press, the campaign against Benjamin Netanyahu now harks back, in its virulence, to darker times before the peace.

This Egyptian policy is driven by an injured pride, a recognition that the country is weaker than its claims to primacy in Arab affairs, that its quest for modernity and success has been thwarted yet again. It is a classic choice between repair of the land and the hunt for foreign demons, and the country has made the easier choice. She rides with the likes of Libya and Iraq, second-guesses American diplomacy at every turn. For our part we go back for more: we ask so little of Egypt, content are we that she has not gone under, that we can still point to the country as a showcase of our power in the East.

In years past we gave Egypt the benefit of every doubt. We averted our gaze from the authoritarianism of the regime, for it was, by the measure of such regimes, a benign one which left alone a land with a good deal of natural civility and grace. Besides, the state was waging a running war against the terrorist-theocratic fringe of radical Islamists. We cut slack for the regime's foreign policy in the hope that the regime would hold. In truth the state was never in danger of utter collapse; it was stronger than we thought, its mainstay, the army, was never really threatened. Now the state has prevailed, and we ought to be able to assess this pillar of American influence. We ought to ask our Egyptian allies why the peace which was good enough in the late 1970s has become anathema to them, why they take American help and ride with America's enemies. We ought to inquire as to the fate of the modernist consensus which anchored the peace a generation earlier and now lies cracked and hidden.

I was in Egypt last year when Al Gore came for a visit. The traffic of the place, deadly on any day, came to a sudden, great halt, as a way was made, through silent streets, for the visitor from far away. We should know the place. We have a large presence there. We have information of every kind on that land. But the visitor appeared clueless. He blessed the good work of the regime and moved on. For the treasure invested in that land we should be able to hang around the place a little longer, to ask the custodians of the regime a question or two about all sorts of things they have been up to of late.

FOUAD AJAMI

Here comes the sun

When Bill Clinton took office, a rather pleasant, forward-looking consensus about environmental policy was developing among researchers, economists, thinkers and some business and conservation groups. The rebound of the ecology, the consensus held, was progressing more favorably than anyone had expected, but environmental regulations had grown top-heavy with process costs. Clinton's early policies cut costs, and they advanced environmental recovery by adopting more flexible, streamlined programs—an ideal New Democrat stance.

Then the forces of darkness took over Congress. Hill Republicans proposed to eviscerate many successful and popular environmental programs, such as the Clean Water Act and the Endangered Species Act. This forced Clinton into a corner. Rather than amend environmental statutes, he had to defend them en masse. The whole process knocked environmental debate back twenty years to its previous shrill, accusatory pitch. Republicans denounced environmentalism in overblown terms. Then the White House discovered there was tremendous political capital in responding with gloom-and-doom predictions. By the time of Clinton's acceptance speech in Chicago, he was chanting the pseudo-statistic that "10 million children live within four miles of toxic waste." (By the calculation used to generate this number, 255 million Americans live within four feet of toxic waste, since many household items are now legally classified toxic at the point of disposal.) The line got thunderous applause.

The challenge for the second half of the Clinton administration will be to recover the spirit of environmental consensus that was budding before Newt materialized. The EPA is one of the government's most successful efforts of the postwar era; it dramatically reduced pollution without any damage to the economy. But it is possible to be both successful and too cumbersome.

Air and water quality rules, toxic cleanups under Superfund, the Endangered Species Act and other programs are yielding noteworthy

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results but should still be made less expensive, more user-friendly and more open to market forces.

To promote rational environmental reform, Clinton must dispense with the gloomy rhetoric, however effective it may be politically. He can depict ecological protection as an arena of American triumph, where activists, scientists, consumers and business managers have cooperated against near impossible odds.

A sterling model for the second term is the pesticide reform bill passed last summer, which dropped the Delaney Clause of 1957. This anachronistic rule banned any trace of suspect synthetic compounds in food, at a time when equipment could only detect fairly large "traces" by today's standards. Because more sensitive tests can now pick up the most minute traces, the reform scrapped that rule in favor of a more efficient system of controlling agricultural chemicals.

Clinton received little commendation: green groups get too much mileage from depicting him as a guy who sells out nature. And Clinton himself has said little about the bill, since its merit detracts from the useful message that the sky is falling. But the fact that a forward-thinking environmental reform bill got to the president's desk even in a polarized election year is proof that, beneath the us-vs.-them façade, there is tremendous interest in environmental optimism.

GREGG EASTERBROOK's most recent book is *A Moment on the Earth: The Coming Age of Environmental Optimism* (Viking).

Do everything

It is time, I guess, to praise the president for the only thing in the world to which he brings the qualities of mind and heart that we associate with conviction: winning. He is a winner, no doubt about it. Historians will write the life of Bill Clinton and they will come to the necessary conclusion, to which all the evidence will point them: he won. He was a survivor. He came back. He was not denied. There was no getting in his way when he had to have it.

But there is really no point in offering instruction on policy for Bill Clinton's second term. Such instruction makes certain assumptions that are not warranted in Clinton's case: the law of the excluded middle, for instance. Will he fix welfare reform? He will fix welfare reform. Then he will fix his fix. Or he will not fix welfare reform. Whatever he does, he will not be moved by anything other than what the very smartest people call "the politics of the issue." This president is the greatest follower who ever led. For this reason, the Twenty-second Amendment will not work its emboldening magic on Bill Clinton's second term. It will not free him to be himself, since he has no self for which to be free. He is a meteorological man.

The competence of Clinton's campaign makes the incompetence of Clinton's governance even more contemptible. In 1993, in 1994, in 1995, we heard again and again about his "learning curve," about the demands of his job (for which "nothing prepares you"), about the need for patience, about his "growing into" the presidency. Now it is 1996 and the candidate needs to "grow into" nothing; he arrives fully grown. In government, learning curves. In politics, no learning curves. Patience? There is no time. It took the Clinton operation three years to put a stop to genocide and three minutes to put a printed rebuttal in the hands of every reporter covering the presidential debate. All of a sudden there was skill.

The man who will win this trashy election has broken taxonomical ground in American politics. There are politicians who are cynics. They believe in nothing. And there are politicians who are liars. They believe in something, but they do not want you to know what it is. Clinton is neither a cynic nor a liar. He is a man who believes in everything. That is why he is popular. And that is also why nobody should be panicked by the prospect of his return to power. A complete opportunist gives no grounds for a complete despair. Don't worry, he'll get around to you, too. In this sense, we are all Clintonites. The only losers in this election are Americans who have no love to give.

When one reads of "Clintonites," one must remember that in this case the suffix cannot refer to a community of belief, as in "Shachtmanites." A Clintonite is just a person on the winning side. Of course, the alternative to Bill Clinton is Bob Dole. I cannot vote for Bob Dole. But Bill Clinton is not, precisely speaking, the alternative to Bob Dole. He is, himself, the alternatives, all of them, now or later. And I cannot vote for everything. So I will not vote. I understand that abstention is not a way of acquitting oneself of citizenship; but I am stuck. It would be a mistake to vote for Dole and it would be an indignity to vote for Clinton. A night of high fives, then, to the inconstant president of the inconstant country, and here we go again.

LEON WIESELTIER

The education presidency

Once re-elected, President Clinton's response to three overriding domestic challenges will define the course of his second term and determine the historical significance of his presidency. The first is turning a chancy welfare reform bill into a real bridge to work and opportunity. The second is forging a consensus around genuine structural solutions to the long-term Medicare problem. The third, on which I focus here, is transforming elementary and secondary education.

Thirteen years after the publication of *A Nation at Risk*, our schools, with some bright exceptions, have improved only modestly while many urban systems have sunk even deeper into crisis. In one notorious recent episode, NYNEX had to administer basic competency exams to 60,000 job applicants before finding 3,000 who could fill entry-level positions. More than 20 percent of all businesses provide remedial training for high-school graduates, at an annual cost of billions. Colleges and universities are forced to do so as well: almost half the students entering the California State University system need remedial instruction in either reading or mathematics.

The appropriate policy response is conceptually simple but politically difficult. Every state should adopt rigorous academic standards, with exams to match. The practice of social promotion should end; no student should receive a high-school diploma or enter college without passing an exit exam. (I'd settle for something along the lines of the proficiency levels set by the National Assessment of Educational Progress, or even the New York State Regents test.) The innovations can flourish outside existing public schools, as well. Charter schools—new publicly approved ventures that are freed from most bureaucratic rules—are already coming up with innovative ways to implement tough standards.

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And we should encourage experiments with private management and vouchers for low-income students until we have a large enough sample to judge the real costs and benefits.

While education remains principally a state and local responsibility, there are some steps President Clinton could take to promote this agenda:

1. Emphasize a national goal of charter school legislation in every state by the year 2000 (about half the states now allow them in some form). Make significant federal seed money available to states whose laws do not impose crippling restrictions on charter schools.

2. Remove all federal restrictions on state use of federal funds to create rigorous exams at the fourth, eighth and twelfth grade; amend Goals 2000 and the Elementary and Secondary Education Act to provide substantial bonuses for states that institute such exams.

3. Encourage every state to make passing meaningful high-school graduation exams a requirement for attending state colleges and universities. Make passing such exams a precondition for receiving federal post-secondary student grants and loans while identifying reasonable options for students living in states that refuse to create exams.

4. Make it clear that the Clinton administration will not obstruct states and localities that seek to experiment with vouchers for low-income students. The president seemed to suggest this in his first debate with Bob Dole. He should follow through.

Proposing these measures would generate a political firestorm. Many conservatives would oppose the expanded federal role; many liberals would fear the impact on public school monopolies and racial minorities. Enacting these measures would mean forging new coalitions across partisan and ideological lines. But, once in place, they could transform our schools for generations. In education, as in other areas, the president faces a choice between a safe course that tinkers at the margin and a riskier course of enduring structural change. If the president chooses the path of bold innovation, he could go down in history as the man who set democratic education on the path to excellence.

WILLIAM GALSTON teaches at the University of Maryland's School of Public Affairs and directs the Institute for Philosophy and Public Policy.

Don't give us your poor

Two major problems that the second Clinton administration will have to come to terms with are the deepening crisis of the working poor and underclass, on the one hand, and the illegal and legal immigration of unskilled workers. The two problems are often treated separately, but a growing body of evidence strongly suggests that they are interrelated, and that solving the latter would go a long way toward solving the former.

The main problem for the working poor is that they simply do not earn enough to live on. Unable to find jobs that pay a living wage, more and more of them are discouraged from working altogether and drop into the underclass. The problem, we know now, is not a failure of job generation. The American economy now creates more new jobs than all other industrial countries, the majority of which pay wages above the median income. The trouble is that most of the working poor are unqualified for the new jobs being created—in high-tech fields, for example—and would starve on the wages for the jobs they are qualified to do.

The Clinton administration has championed job training as the solution. Unfortunately, there is now a wealth of evidence showing that most of these programs do not work, while the few that do offer only modest returns.

The problem, then, will have to be addressed by tightening the labor market and thus increasing the wages of the McJobs for which the unskilled are qualified, such as taxi driving, hamburger slinging, house cleaning, and the like. In other industrial countries, and in America before 1965, the unskilled worker lived with some dignity off the wages from just such jobs. This is where a consistent, toughmindedly effective but humane immigration policy, undistorted by the hypocritical and contradictory pressures of the right and the left, enters the picture.

The liberal and mainstream economist doctrine that uncontrolled immigration has no adverse effect on the urban poor, or actually helps them by creating new jobs, has now been thoroughly demolished by recent studies coming from both right- and left-leaning labor economists. The flooding of the urban labor market with large numbers of illegal and legal unskilled migrants willing to abide sub-human conditions for any going wage has devastated the income prospects for the working poor who are citizens of our cities. At the same time, by putting inordinate pressure on the low-income housing stock, this inflow also increases the cost of living for the urban poor.

Liberals and other advocates for the urban poor have been stunned into inertia by right-wing and nativist rhetoric on the subject. A second Clinton administration should take the lead in reclaiming this issue from the right. To do so it has to go well beyond the recent immigration bill. The following three initiatives would provide a good start:

First, it must be recognized that border patrols will neither solve nor put a significant dent in the number of illegal migrants. The more effective solution is the one every expert knows about but no politician is willing to advocate: cutting off the demand for illegal migrants by severely fining employers who repeatedly break the law by hiring them. It is precisely here, of course, that powerful business interests are likely to weigh heavily on the Clinton administration. By bucking them, the president could show his courage and independence.

Second, the interests of the business sector now depending on illegal immigrant labor, and a humane concern for these workers and the countries they come from, could all be addressed by expanding the present system of contract labor, which is concentrated in industries that don't attract the urban poor. America has decades of experience with such programs; they benefit local employers, the contract laborers and the home countries to which they send remittance. These models could be used as the basis for a greatly expanded contract labor program which, by meeting minimum wage and work environment laws and providing governmental control on the numbers coming into the country, will protect the wages of lower-class urban workers.

Third, there should be a temporary reduction, perhaps even a complete halt, on the number of unskilled legal immigrants allowed into the country. With unemployment rates of over 40 percent among the young urban poor, it is ridiculous, even dangerous, for the nation to be adding more such workers to the labor market. Such a reduction would mean placing greater limits on the number of relatives immigrants can bring into the country, never a popular option but one which strong, principled leadership could help put in place.

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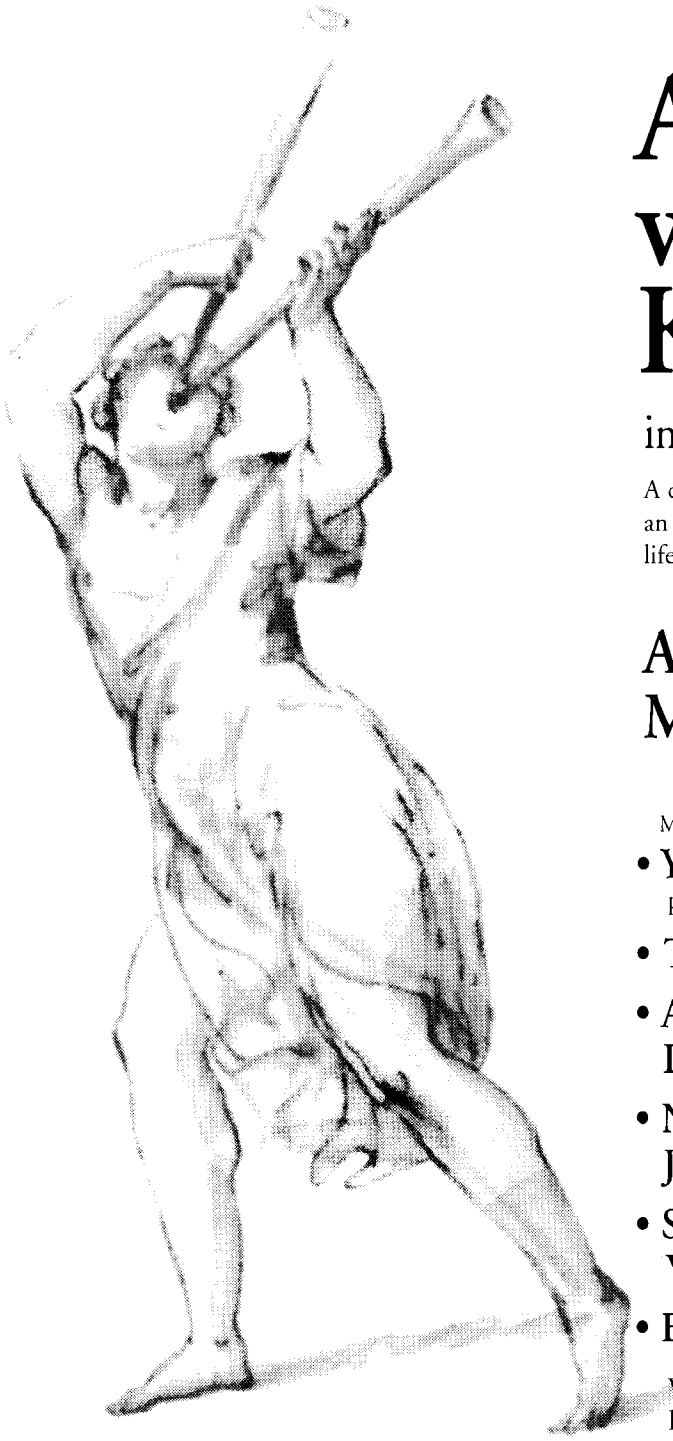

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America has no greater glory than its cherished tradition of immigration. This tradition should be preserved. I am not advocating an end to, or even a major long-term reduction in, immigration. Indeed, I favor increasing the number of skilled and professional immigrants. And, contrary to the crypto-racist alarmism of right-wingers who call for immigration reform, I think that the best feature of the recent wave of immigration is its wonderful non-white diversity.

Let us hope that the president will have the moral and political courage to resist the strange union of business interests, naïve libertarians and misguided left-wing urban advocates that has stymied all past attempts at meaningful immigration reform.

ORLANDO PATTERSON is John Cowles professor of sociology at Harvard and author of the forthcoming *The Ordeal of Integration.*

Size matters

If any of the president's staff flicked on the tube between stump speeches on the campaign trail, they would have noticed that education is in. Not since the days of "Room 222" and "Welcome Back, Kotter," have there been so many shows about school in prime time: "Mr. Rhodes," "Nick Freno: Licensed Teacher," "Dangerous Minds." There are lessons to be learned here—and not about licensing teachers.

The obvious one is that never, perhaps, in modern American life has education been a hotter issue. The less obvious one has to do with class size. Have you ever noticed, Mr. President, how on all these shows, the viewer gets to know only a few of the students? There's a reason for that. In a thirty-minute sitcom or an hour-long drama, a viewing audience can only get to know a handful of kids. Similarly, a typical teacher can only get to know so many students in a fifty-minute period. On "Welcome Back, Kotter," for instance, the sweathogs monopolized Mr. Kotter's time while the good kids languished in the background. And as it is for the TV audience, so it is for the typical high-school teacher. In fifty minutes she can only get to know so many kids.

In the next four years, Mr. President, you should make reducing class and school sizes, particularly in poorer, overcrowded schools, a top goal. As governor of Tennessee, Lamar Alexander financed a study of the effect of class size on learning in the state's rural, suburban and urban schools. It showed that smaller classes during the elementary school years produced dramatic boosts in student achievement—regardless of student background—and that these gains held even after students were returned to larger classes in later years. Everyone knows that smaller classes work; they're in large part what affluent parents are paying for when they send their kids to private schools.

The place to start is in the earliest grades, kindergarten through third, in order to give all children the solid educational foundation they need to succeed later. Nothing would do more to help all children to read by the third grade, as President Clinton has proposed, than to reduce all elementary school classes to 20 students or less during these years.

Most people assume that school districts would have to hire lots more teachers if they reduced class size, but they wouldn't. In too many districts across the country, teachers work outside the classroom, in administrative positions created partly to respond to the needs of teachers in overcrowded classes and schools. In New York City, for instance, the student-to-teacher ratio is approximately 16 to 1; classes remain large, however, partly because so many teachers aren't teaching and because of overcrowding.

Instead of giving money to states for special education or other "pull-out" programs, the federal government should give funds to schools exclusively to reduce class size; if every class, particularly in the earliest grades, had 20 students or less, then every child, in essence, would receive a "special" education. And just as every class should have no more than 20 students, every school should have no more than 20 teachers. Teachers get lost in big schools, just as kids do. Smaller schools and classes will create the kind of communities where teachers, parents and students can work together and know each other as individuals. If you can push for school uniforms, Mr. President, you can push for smaller classes. Call it your 20/20 vision for school reform.

SARA MOSLE is a contributing writer for *The New York Times Magazine.*

Don't ask, don't tell

Intellectuals love to imagine that the people who wield real power are just waiting to be told how to use it. This fantasy of access and influence is a kind of *déformation professionelle,* and one with a long, richly ironic history: think of Seneca and Nero, Voltaire and Frederick the Great, Michael Lerner and the First Lady.

For a politician, President Clinton seems to be pretty well-informed. Even his enemies concede that he does his policy homework, and his political instincts are legendary. I would be amazed if, at this late date, a journalist, a pundit, or even a bona fide expert in a genuine field of study could suggest to him a significant course of action he or his handlers have not already considered, focus-grouped and triangulated from here to the moon and back.

But he's not a free man, either: he has constituencies to satisfy, contributors to reward, political debts to pay and, of course, his own career to advance. These considerations matter a lot more than bright ideas, or right ideas. Many eloquent opponents of the welfare bill had the president's ear, including some of the policy experts who'd helped him formulate his own plan. Whatever one thinks of the president's decision to sign the measure into law, I don't think there's much doubt that the only arguments that counted in the end were the ones about his own immediate political fortunes. Does anyone think the president really believes that uniforms and the Internet are the keys to educational progress? Or that what battered women need more than anything else is their own emergency number?

Journalists are supposed to speak truth to power. But I've always wondered what the point of it is. If power were interested in truth, we would be living in a very different world. Why not speak truth to the powerless, who at least have something to gain from listening?

If President Clinton wants to know what I think are the problems and possibilities of contemporary American society, he can always subscribe to *The Nation,* where I've been writing for years. Or he could just call—I work at home, I'm in the book. That he hasn't requested my views on any subject, and communicates with me only indirectly, through Democratic Party junk mail addressed to "Occupant," makes me suspect he's not that curious about my views. I don't blame him a bit. If I were president, I would feel the same way.

KATHA POLLITT is a columnist for *The Nation.*

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THE HARD QUESTIONS

It's better in Europe

To experience Stockholm and Copenhagen, between visits to Seattle and Minneapolis, raises this question: Why are even the most prosperous American cities surrounded by rings of abandonment, underpopulation and visual desolation that one sees nowhere in Western Europe?

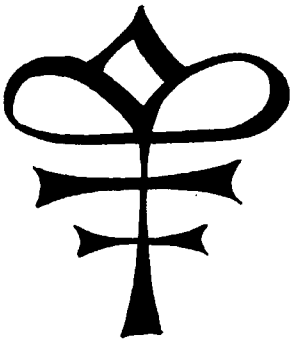
Away from the glittering new skyscrapers that mark the center of so many successful American cities (successful, that is, by American standards, in that they do not lose population and maintain reasonable municipal services), and just beyond the freeways that ring these centers, one typically finds a wide swath of decay—where the population has been sharply reduced, and where gas stations, used-car lots and the like have replaced once dense communities. There may be a scattering of low-rise housing projects (often boarded up), occasional stretches of single- or two-family dwellings, small apartment buildings (often vacant), an occasional old school and the odd new school or senior center. But, overall, these are landscapes that barely deserve the adjective "urban," and they stretch for miles, until the suburbs begin.

The contrast with European cities could not be greater. There the urban fabric is basically uninterrupted, except perhaps for the parks and playgrounds that have replaced old town walls.

I traveled to Stockholm and several other Swedish cities, and to Minneapolis, to celebrate the 150th anniversary of mass Swedish immigration to the United States. Norwegians and Danes arrived in the U.S. at the same time, and eventually became the largest ethnic group in the northwestern belt, from Minnesota to Washington state. The settlers recreated conditions in Scandinavia itself: efficient, honest government and good public services. But the cities have turned out to be vastly different.

The nineteenth- and early twentieth-century sections of Stockholm and Copenhagen are well maintained, and people of the same class as those who built them still live there, as is true in many European cities. The American urban developments of the same period, which have hosted a sequence of varying ethnic groups, went into rapid decline in the postwar period. They are now inhabited sparsely, by African Americans and Hispanic immigrants, and perhaps some Southeast Asians. Few businesses remain from bustling streets that were once lined with continuous rows of stores; the few new ones mostly serve the automobile. The most vigorous of these areas house the new businesses of Southeast Asian immigrants and refugees, who move into the abandoned stores not yet torn down and produce a simulacrum of a lively shopping street. But the new immigrant areas located in these semi-abandoned sections are still a far cry from the burgeoning Little Italies or Lower East Sides of my youth.

This grim picture is sometimes modified by at least one lively sector running out from the center, generally in the direction of the university. It houses the yuppies who want to stay in town, the students who find spaces in one- and two-family houses and small apartment buildings, and businesses still attracting pedestrian traffic from the neighborhood, from coffee shops and restaurants to handicraft stores and art galleries.



The visitor, ensconced in a hotel within the girdle of freeways, will be disappointed by the absence of any evening pedestrian traffic on the streets—few people live within the freeway circle. He will be disappointed, as I was one evening in Dallas in a downtown hotel, to discover that there is not even one movie theater left in the center city and that I would have to take a taxi many miles away to find one. Most major cities have an urban elite that will insist on a downtown theater for traveling Broadway shows, perhaps even a local repertory theater, and a symphony hall, possibly in a restored movie theater. But movies depend on residents, and there aren't enough to maintain one downtown.

Why this happens is not as clear as it once was. Urban depopulation once seemed the inevitable result of our high automobile ownership and low land costs. There was no parking space in the old built-up urban areas, so why not abandon them to build anew on the wide-open fields? But Europeans own about as many cars as Americans, and some of these cities have plenty of space to expand into—Sweden is the size of California, with one-fourth the population. They could also expand into the green fields and abandon the older areas if they wished to. Where do they put their used-car lots and filling stations anyway?

The other reasons we used to offer for America's differences had to do with immigration and race. The old native populations here tend to distance themselves from crowded and noisy immigrant areas, moving even faster when blacks replace immigrants. They have no similar need in Europe. So here the mansions and high-quality apartment houses are cut up into rooming houses and eventually replaced by used-car lots. But Sweden, France, Germany, are also now countries of immigration, with high proportions of foreign-born residents.

Perhaps, some even suggest, the problem is television—there's no reason left to go to city centers for movies or the theater. But Europeans have as much television as we do. And then there is crime. But their crime rates have risen, too.

One sensible explanation is that European regulations on building are stronger than ours, though ours are strong enough. But perhaps more important than the strength of these controls are what one controls building for, and who exercises the controls. We control building to keep out low-income uses, such as apartments or cheap or subsidized housing, or churches or synagogues or temples, and the controls here are local, not national. Controls in Europe lie in the hands of governmental bodies with a wider reach. One thing they use these regulations to do is to maintain their cities. Inevitably this means that land for new building in the outskirts of cities becomes scarcer and more expensive, and it is not so easy for developers to leapfrog into the agricultural areas.

But at the bottom of it all, I think, is neither automobile use nor ethnic and racial succession nor TV-watching nor housing controls, but one simple factor: that they love their cities more than we do. One cannot imagine Europeans allowing the centers of their cities to be demolished for a cluster of gleaming skyscrapers ringed by freeways, though one can find a few half-hearted examples.

Economists decry the costs of America's urban pattern (the miles of underused streets and sewers, the long commutes); sociologists decry the isolation imposed on those remaining in the zone of abandonment. But most Americans today are simply following their preferences. This may change; the economic argument for better use of these near-in areas is strong, and the social arguments for a more integrated city may yet change public policy. But not now.

NATHAN GLAZER

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BOOKS & The Arts

Stanley Kauffmann on Films

The Food of Love

Woody Allen's new film has charm. (I had to re-read that sentence. Yes, it's true.) **Everyone Says I Love You** (Miramax) is warm from its first moment, and, almost all the time thereafter, it glows. Why the difference from his past films? Look at this glittering roster of collaborators: Bert Kalmar and Harry Ruby, Walter Donaldson and Gus Kahn, Ray Henderson and Lew Brown and B.G. DeSylva, Richard Rodgers and Lorenz Hart, Cole Porter ... others. They are some of the ace songwriters of the 1930s. Allen's new film is a musical, not with new songs but rich, very rich, with old ones. To cap it, Allen's music director was Dick Hyman, whose arrangements are the best kind of Broadway pulsing and caressing. And right alongside Hyman's scoring is the choreography of Graciela Daniele, brisk, electric dance of the 1930s.

Let's not shortchange Allen's own contribution—besides originating the idea. Allen's directing career is a prime instance of on-the-job training: he began directing before he really knew how, but now he's so at ease that his films seem to have been born the way they are. The maker's hand is almost invisible.

Here's the beginning of this picture. The first shot looks streetward through one of the fountains in front of the Metropolitan Museum at a young couple. First reaction: this is going to be another one of Allen's odes to the New York that he loves. True, but there's something else: he has to establish that this is a musical. He does it just by *doing* it. The Boy turns to the Girl and, instead of speaking, he starts to sing "Just You, Just Me." Right there in broad daylight on Fifth Avenue. It's Edward Norton singing, and it's Drew Barrymore responding. No dubbing of vocalists. (One of Allen's happiest ideas. All the principals do their own singing, which makes the songs pleasant enough and—forgive the term—more real.)

The song continues. We move along the street. A black nurse and her aged white charge sing a couple of lines. Then a panhandler. Norton and Barrymore stroll past a high-fashion shop; three mannequins in the window dance to the tune ... and so on. Ernst Lubitsch, thou should'st be living at this hour. Allen is a bright disciple.

When Norton goes to Harry Winston to buy an engagement ring, the salesman shows him some expensive ones. Norton suddenly bursts into song, telling us "My baby don't care for rings / Or other expensive things. / My baby just cares for me." The salesman joins him, as do other customers, along with some slick tap dancers from God knows where. (Graciela Daniele knows, too.) Norton then buys a ring, which gets interestingly lost.

And that's how the film goes, suddenly blossoming from time to time into song and dance, sometimes frenetic, sometimes poignant, always enjoyable. There are songs from Maurice Chevalier pictures and from Marx Brothers pictures. The film's title comes from a Marx Brothers number. The last sequence is a party in Paris at which everyone, male and female, wears a Groucho get-up, and we get "Hooray for Captain Spalding" in French.

This brings us to the story, or stories. They matter less than in most musicals. There's a glitch in the Boy-Girl relationship because of her brief excursion with a paroled convict brought into her life by her do-good mother, Goldie Hawn. (Who is also responsible for a surprise appearance of Itzhak Perlman and daughter.) Hawn's ex-husband is Allen, father of a daughter. Her present husband is Alan Alda, who brought along children of his own—including a politically conservative son who shocks his liberal father. (Ultimately the son is cured of his conservatism by surgery.) Also involved is an art historian played by Julia Roberts. (She sings "I'm a Dreamer, Aren't We All?") The plots exist only to provide rifts and reconciliations and changes of locale. Allen does plenty of New York adoration, but he also gives himself the chance to enjoy Venice and Paris. (He and Hawn do a dance on a Seine embankment that has some spiffy novelties.)

All the principals of the piece, except one, keep the film flying high—especially Hawn. Now that she has abandoned her giggling "Laugh-in" persona, she has become a sturdy comedienne. The exception is Allen himself. The trouble isn't that he's always the same—Alan Alda, for instance, is always the same—but Allen's sameness is uninviting; and it's dissonant. In his own ebullient picture, full of high spirits and high dudgeons, he snivels.

His performance doesn't even create self-parody. At one point in the picture,

FILMS WORTH SEEING

American Buffalo. *Dustin Hoffman and Dennis Franz in David Mamet's quasi-Beckettian drama, through two losers in a junk shop, of attempts to exist. Hoffman and Franz are graphic, if not memorable. (Reviewed 9/16 & 23/96)* **The Line King.** *Al Hirschfeld, man and artist, is a delight; and so is this bustling, informative documentary. (10/21/96)* **Secrets & Lies.** *A young black London woman discovers that she comes from a white family. The cast, under Mike Leigh's wizardly direction, triumphs over the too-tidy conclusion. (9/30/96)* **Small Wonders.** *Exceptionally moving documentary about a New York woman who teaches violin to 150 students in East Harlem schools—and awakens them to themselves. Excellent. (11/4/96)*—**SK**

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Julia Roberts has, for sufficient plot reasons, gone to bed with Allen and is in a semi-daze after his magnificent lovemaking. With a real comedian—say Robin Williams or Dustin Hoffman—this moment might be funny, a gorgeous woman reeling from an encounter with a shrimp. Here, however, all we can think of is that Allen, as director, is using his power to build himself up as a man.

Of course *Everyone* doesn't really take place in the three cities of its settings, least so in New York. Musically, for instance. The whole cast knows and sings these golden oldies. We keep wondering about this, especially with the younger ones. Where's the rock, the rap? One brief scene in a disco gives us a funny slice of a rap singer's version of one of the oldies, but rap is there just to be put down vis-à-vis the "straight" oldies. Otherwise, all these characters exist in a rockless, rapless world. And virtually everyone in the picture is well-off. A musical doesn't have to plumb social strata: money is an enablement for plot freedom. But this vision of Manhattan society has the same relation to the facts as Allen's carefully selected views of Manhattan's loveliness.

What's most curious in Allen is his nostalgia. He keeps trying to remake New York into what he imagines it was like about the time that he was born (1935), with music drawn from the Broadway and Hollywood hits of that decade. *Radio Days* was an overt attempt to go back there; *Bullets Over Broadway* was a grab at Damon Runyon. Through many of Allen's films, despite their freight of topical reference, there's a hint that things used to be better, especially the music. (Remember how Gershwin on the sound track supported the up-to-date *Manhattan*.) Allen, full of postwar frankness about neuroses, yearns for what he feels was a pre-war Eden.

How will these old songs fare today? At Joseph Papp's production of *The Pirates of Penzance* in 1980 I was surrounded by young people who had clearly never heard a word or note of Gilbert and Sullivan and were there chiefly (they said) because Linda Ronstadt was in the cast. As the performance rolled on, I could see how they were being captivated by the piece. As they listened to the old, they were discovering, delighting in, something new. Maybe all those unfortunates who were born after World War Two will respond the same way to Allen's picture, to the Lubitsch *légèreté*, to those delectable old romantic songs. The opening line of *Twelfth Night*: "If music be the food of love, play on." What do you mean "if"? •

Jed Perl on Art

American Real

Still life, that most matter-of-fact kind of painting, achieves an astonishingly unforced monumentality in the work that Louisa Matthiasdottir has been doing over the past ten or fifteen years. Matthiasdottir arranges ordinary objects—a big iron pot, a few squash and tomatoes—so informally that their relationship seems up for grabs. Then her supercharged color and shorthand-naturalistic brushwork go to work, and what at first looks like randomness turns out to be urgency, lucidity, freedom. There's nothing forced or calculated about these good-sized canvases in which everything is bathed in a bright, clear gray light.

Matthiasdottir has been inventing subtly angled compositions for a quarter century and more, and by now she's pushed beyond plane geometry into the mysterious laws of physics. In her recent paintings, a small glass jar set way off to the side is dense, heavy, magnetically charged, while an eggplant or a melon that's right up front has a weightlessness that defies its mass. Matthiasdottir has stripped away still life's allegorical and metaphorical meanings. She's gone back to the basics, which turn out to be startlingly complicated and unpredictable. The objects control the space. And we're exhilarated, because everything seems to be coming together right before our eyes.

Several of these still lifes are included in the first retrospective of Matthiasdottir's work that's been organized in the U.S. The show—which reaches all the way back to an extraordinarily accomplished painting of a boy at play, done in 1937, when she was 20, and includes landscapes of her native Iceland and delicate portraits and the most spectacular self-portraits anybody has done in years—will be touring the country well into 1997. It's at the Watkins Gallery of

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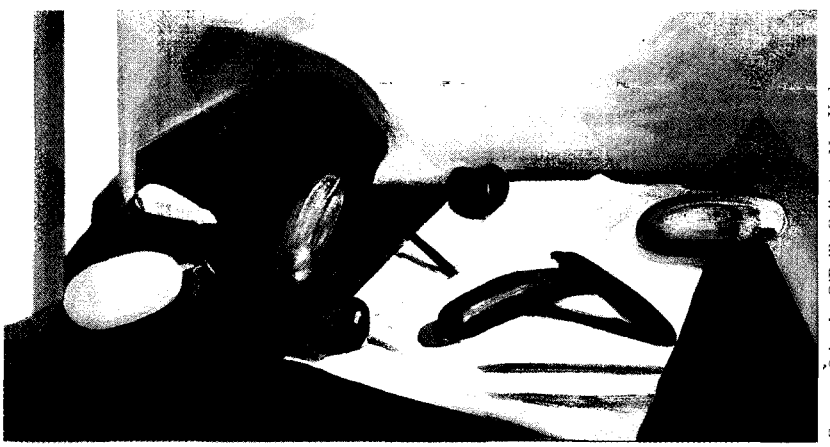
American University in Washington in October, the Sordoni Art Gallery in Wilkes-Barre in January and February, and the New York Studio School next spring.

This small retrospective, which has been drawn from the artist's own reserves, isn't all high points. A big outdoor scene, based on a photograph of family members on an outing, is uncharacteristically fuzzy; the unequivocal color has the paradoxical effect of making everything seem tinted and remote. And certain landscapes become almost mechanical, with their stiff architectonic arrangements of farm animals in green hills. But a fourteen-foot-wide triptych of animals in an Icelandic landscape has a winning decorative power. The portraits from the 1960s are wonders of tonal control. Many of the small oil studies are quite deft; they highlight the unselfconscious fluidity of Matthiasdottir's brushwork, which is key to everything that this 79-year-old artist has done during the more than five decades that she's been living and working in New York. And the more recent still lifes and self-portraits are nothing short of miraculous.

Over the twenty-five years that I've been seeing Matthiasdottir's pictures, her work has moved closer and closer to the center of an imaginary map of contemporary art that I carry around in my head. Matthiasdottir has always been a first-rate artist, and if what she's doing now seems especially important, it's because her optimistic pragmatism is set in high relief when so much of the strong new work that we're seeing in the galleries is produced by artists who are circumspect about their emotions. She's a virtuoso with paint who can suggest the softness of a tablecloth or the cold gleam of a knife blade with a few passes of the brush, but there's never anything showy about her painterly effects. Matthiasdottir depends on a dramatic juxtaposition of color shapes to build a space, and then her giddy interludes of naturalistic extravagance saturate the space with life.

Strangely enough, it's often the more sophisticated gallerygoers who feel that Matthiasdottir's realism is a little bland. Could it be that the seamlessness of a naturalistic image, especially if the illusion doesn't call attention to itself, appears naïve to people who are always looking for a subtext? If only they knew: Matthiasdottir has subtexts galore. When she's working at the top of her powers, straightforwardness is her way of expressing complicated feelings. When she lets her brush pass quickly over an object in a still life or the particulars of her face, she's defining the limits of what we know. And when her color is astonishingly vibrant, the beautifully structured compositions can seem like a way of bringing order to big, amorphous emotions.

By giving her best pictures such an unfussy emotional impact, Matthiasdottir sets a standard against which I find it useful to measure other people's work. It is interesting to juxtapose Matthiasdottir's new canvases with some of the paintings in a current Alex Katz retrospective, called "Alex Katz Under the Stars: American Landscapes, 1951-1995," that was at the Baltimore Museum of Art over the summer and is now touring. And it's also worth seeing how some younger realists stack up against Matthiasdottir, such as Philip Geiger, who has had a string of shows at Tatistcheff and Co. in New York.



Courtesy Salander-O'Reilly Galleries, New York

LOUISA MATTHIASDOTTIR, *TOMATOES WITH GREEN AND YELLOW SQUASH AND BLACK POT*

For years, realism was a minority taste in the American art world, and sometimes even people in the know were inclined to keep fairly quiet. They didn't want to deflect attention from abstract art, which was recognized the world over as a defining achievement of postwar New York. And now, when abstract painting is often said to have run itself into the ground, there is almost a greater desire to cling to an establishment genealogy that begins with Pollock and goes all the way to Robert Ryman and Brice Marden. Yet nothing could be further from the truth than the idea that painting what you see is not a New York thing.

Hans Hofmann, with whom Matthiasdottir studied after she arrived from Iceland in the early 1940s, always structured his teaching around the experience of working from a still life or a nude. He certainly encouraged Abstract Expressionists such as Joan Mitchell to bring a strong perceptual element into their work, and the important painters of figures, landscapes and still lifes who studied with Hofmann include not only Matthiasdottir, but also Nell Blaine and Robert De Niro (the father of the actor). It's sometimes forgotten that Giacometti's mature representational style was first shown not in Paris but in New York, at the Pierre Matisse Gallery in 1948. And it's also significant, I think, that Balthus's first museum retrospective was in 1956 at the Museum of Modern Art, where it ran concurrently with a Pollock show. New Yorkers have always had their romantically speculative streak, which led them to abstract art; but they're also pragmatists who believe that what you see is what you get.

After a decade when everybody has been looking for alternatives to the less-is-more approach of much New York School abstraction, you'd expect that attention would focus on all the other painting that goes on in New York. There has been some revisionist thinking, but it hasn't really amounted to much. People grow weary of the old myths, but they cling to them, too, and when the time comes for a change, there's a tendency just to pile new myths on top of old. This helps to explain why, with abstract painting losing its allure, American museumgoers who want to get back to nature have been inclined to embrace the School of London, which is presented as a realist alternative to New York. In 1994, Lucian Freud's retrospective at the Metropolitan Museum became dinner party conversation all over Manhattan. Freud's high bohemian London, with aristocratic ladies and a drag queen all undressing in the artist's barren atelier, had a hardbitten documentary impact. And New York succumbed.

Freud's figure paintings are at the Acquavella Gallery in New York this month. He renders each square inch of flesh—he piles on the paint until it creates weird mounds and ridges—and he wows an audience that sees this nitpicky naturalism as painterly magic. He's transformed a rather traditional studio exercise into a high-concept postmodern game, and although the programmatic thinking makes his paintings feel airless and inert, there's an audience that's willing to accept such overdetermination as a kind of meaning. Freud is so ardently realistic, so intent on proving that he will not be abstract, that he satisfies people's assumption that

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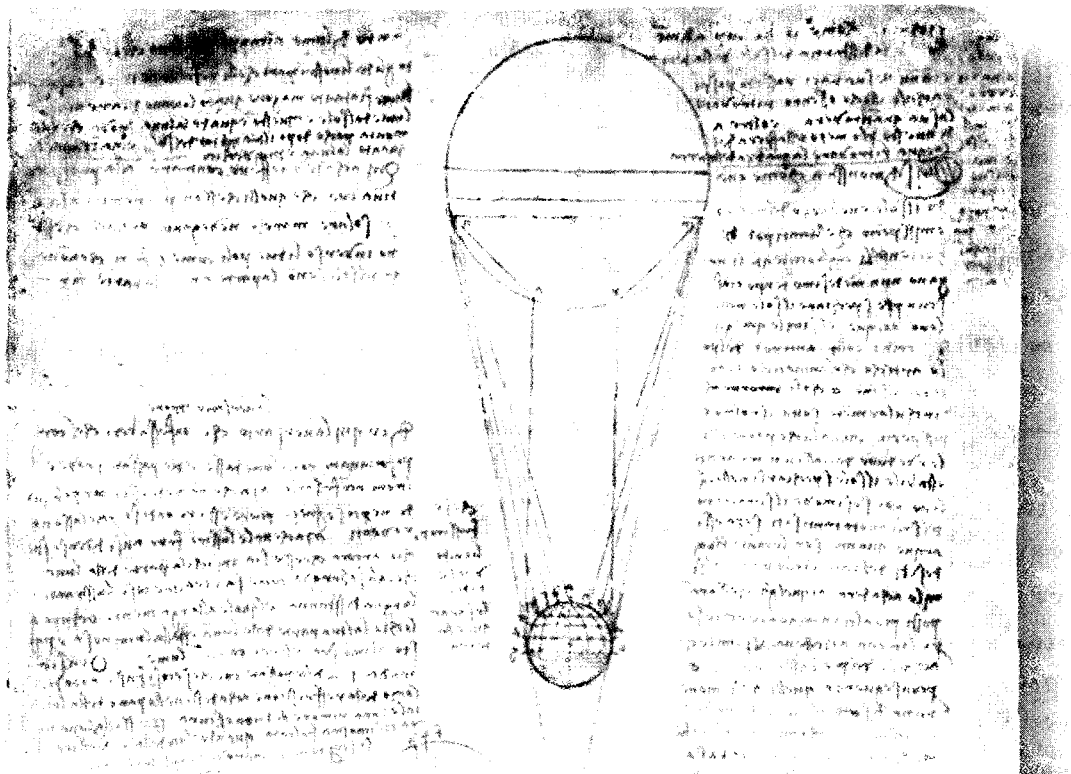

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abstraction and representation are irreconcilable absolutes. He's admired for being everything that the New York School is not: he has stories to tell, and he dots all the i's and crosses all the t's. And he's not the only London artist that New York finds increasingly engaging; there is also heightened interest in R. B. Kitaj (an American who's lived in London for decades) and renewed attention paid to Francis Bacon, and a growing curiosity about less-known figures such as Leon Kossoff, Frank Auerbach and Rodrigo Moynihan. The Brits suddenly seem relevant, precisely because they're outside the New York loop.

The Matthiasdottir retrospective ought to be recognized as a key event in contemporary art. It ought to be at the Metropolitan Museum, where Lucian Freud had his show. But that won't happen, since this artist's major-league emotional impact is so unlike what people have been led to expect from important new painting, especially in New York. Matthiasdottir doesn't care to startle us with the very fact of her being a realist. She insists on an old idea of visual credibility, but she gives that approach an uncategorizable contemporary freedom, and she does so with a feeling for color and construction that come straight out of abstract art. She's a New York School painter who wants to celebrate the overwhelming reality of the city; her still lifes have a New York clarity, a New York pace. Her work is such a thoroughgoing synthesis that it may be misunderstood as cautiously conventional. But if you tune into what Matthiasdottir is doing, you may end up thinking that if this isn't part of the mainstream, then the mainstream can go to hell.

Alex Katz started out at roughly the same postwar moment as Matthiasdottir, and there's really no mystery as to why he garners so much more praise than she does. He leaves the tension between abstract structure and realist imagery right there on the surface, for all to see. If you can overlook the yawning chasm in recognition that separates Katz from Matthiasdottir, it's clear that they're working some of the same terrain. Katz also wants abstract and realist impulses to flow together. The difference is that he insists on making the synthesis look synthetic—and therefore hip.

Going through Katz's landscape retrospective, you see a smoothly intelligent man turning the whole world into an abstract painting, which can make sense to people who are inclined to read abstract paintings as landscapes anyway. Katz's preferred brand of flattened-out, everything-up-front space was already in place in the landscapes that he was doing in the mid-'50s, which included small colored-paper collages as well as bigger oils. He has always ignored all the annoying details and done one-color-per-shape work. A tree becomes an interesting ragged-edged form. And whatever details Katz does include are treated autonomously, as if they were visual stage directions indicating the weather or the season or the time of day. In *Thick Woods, Morning* (1992) the all-over dark green is given a dappling of whitish strokes: those are the leaves flickering in the wind, only freeze-framed. *Gold and Black #2* (1993) is a big yellow Barnett Newman, except that Newman's black vertical stripes have been angled slightly and hung with a few leaves so that they're transformed into early spring trees.

Katz's barebones enigmatic look, which turns dark city streets and brilliant New England mornings into minimalist icons, seems especially suited to our been-there-done-that moment. His paintings have built-in *déjà vu*. He knows that we know that abstract art emerged as artists from Monet to Mondrian rethought the landscape, and the way he reverses their march toward nonobjectivity gives the paintings a swank pop allure. His nighttime canvases are Ad Reinhardts, except that the silhouette of a tree or a bank of windows in a loft building has suddenly appeared. These are simple, almost arithmetic propositions: abstract impact plus naturalistic detail equals Alex Katz. And Katz, who knows that an artist ought not force his effects, brings off the visual frissons with casual aplomb. These are effective pictures, but the abstraction-into-representation equation is stated so starkly that a viewer can't really engage. Even the awkward bits are meticulously preplanned. I admire Katz's panache, but these paintings don't amount to much more than ingeniously personalized wall decor.

The devil's bargain Katz has made with abstract art is easiest to grasp when you take a look at the work that he's done with his cutouts, a radically different medium that he dreamed up in order to create some deft studies in downtown charisma. The cutouts—which have focused on several generations of art-and-literature notables, from the poet and dance critic Edwin Denby to the painter Francesco Clemente—are about the fun that people have when cutting a figure in public, and because they're literally cut out and stood up in a gallery, the comic implications are almost incalculable. I'm glad to see Katz letting loose with his naturalistic gifts, yet it's impossible to avoid the conclusion

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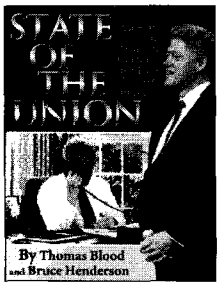

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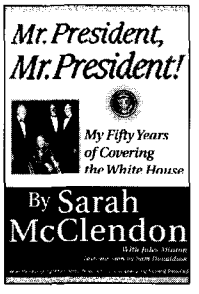

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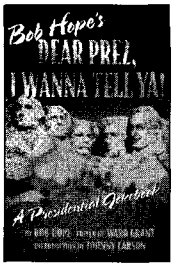

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that he's only willing to have serious painterly fun when he's gotten away from the discipline of a rectangular canvas, when he's not really painting paintings.

I'd like to set a Katz cutout next to one of the self-portraits that Matthiasdottir has done in recent years, say, the *Self-Portrait with Green Shoes* (1993). Matthiasdottir's self-portraits are about going solo; she's a great-looking bohemian lady who's reached old age. And when she regards herself, she is every bit as amusing an observer of the inexpensive chic of downtown artistic circles as Katz was when he did his cutouts of Edwin Denby, except that she's also painting a painting. This slim woman with the beautifully shaped head has the same kind of straight-on though guarded gaze that Katz saw in Denby, the look of the ad hoc aristocrat. With her ramrod-straight posture, boldly striped sweater and bright green shoes, she's almost an allegory of her own severe hedonism. Her head, with every important plane in place, presides over a naturalistic essay in the proposition that less is more. And the accompaniments in certain other self-portraits—an umbrella, or a pitcher on a table, or a big shaggy dog—suggest the same back-to-basics spirit that we know from her still lifes.

Matthiasdottir proves that an artist can use antinaturalistic color weights to express fundamental intuitions about appearances. She knows how to make the smallest details link up organically with the broad compositional moves, and that's way beyond Katz. John Ashbery, an admirer of Matthiasdottir's work, was saying something along these lines in 1982, when he pointed out that Matthiasdottir's painting, "despite its tendency toward broad simplification, [has] an air of heightened realism—a kind of trompe-l'oeil that works on a mental rather than an optical level." Constructivism, it turns out, is a natural phenomenon.

Matthiasdottir's brushstrokes, broad and forthright and unshowy, pull everything together. In America, where virtuoso brushwork has been so overdone that it has become a cliché, many punctilious realists have a hard time remembering that a painterly brushstroke isn't a dead end but a means to an end. Some realists now recoil from the freedom of the brush. That is their loss; but there is also hell to pay if you get so caught up in the mystique of painterly painting that oil-on-canvas turns into an artsy philosophic quagmire. Katz first came to prominence as an artist who rejected painterly painting, but in his big landscapes the brushstroke has returned,

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like a handprint of the 1950s, a jokey recollection of the days when paint was king. As for Matthiasdottir's view of the brushstroke, it's poetically matter-of-fact. Go through her retrospective and you'll see an artist who uses the brushstroke to push through the material; she understands that the paint that reveals can also veil, and she wants to do a bit of both.

The problem is deciding when to do what, and why. These aren't necessarily conscious decisions. The character of an artist's brushwork ought to emerge out of the painting process itself, and there is always one or another realist who is just making a name and knows how to give a painterly style some tantalizing unpredictability. Philip Geiger, who is 40—his most recent show at Tatistcheff and Co. was in 1995 and another is slated for next spring—constructs contemporary interiors out of a weave of jagged, nervous strokes. The result is pictures that are filled with a distinctive contemporary instability. Geiger's smallish canvases are updates on the old idea of the conversation piece: a relaxed group of family members or close friends, who in these paintings are talking or having a coffee or daydreaming. Geiger has an intelligently understated way of getting at some of the complexity of their relationships; he does it by keeping the painterly rhythm of his canvases open, uneven, a bit unpredictable. When he leaves a face a little blurred, he is picking up an undercurrent of tension or uncertainty; he won't let everything come into focus, and it's that not-quite-all-there ambiguity that holds our attention.

Geiger's suburban American interiors are pleasantly but sparely furnished: a couch, a table, a desk, a computer, nothing much on the walls, few rugs, no curtains. The expanses of empty white wall suggest that the people who live here aren't too deeply dug in; they want some mobility. But those blank spaces also create a structural challenge, because Geiger can't let them become holes in the compositions. These paintings are about a slightly cold domesticity, and in an odd way the prairies of wallboard relate to the gray walls that Matthiasdottir leaves above her objects, although Geiger has nowhere near her gift for giving such intervals a positive force. If Geiger understands abstract structure, it's not in a start-from-scratch Constructivist sense but in a more act-and-react Abstract Expressionist way.

Between Geiger's narrative improvisations and Matthiasdottir's absolutist realism there is not only a great qualitative difference, there is also a difference in expectations. Geiger is the kind of realist who means to make sense of the randomness of life, while Matthiasdottir's idea is that if she looks hard enough at the world it will turn out to have the classical order that she already knows from art. That's an ethical position. In the tan-and-gray portraits that she was doing in the '60s, Matthiasdottir was a painterly expressionist with neoclassical leanings; she looked at the model and saw afterimages of Corot and Courbet. A quarter century later, she has complicated the equation further: you might say that now she's looking at nature and seeing afterimages of Mondrian and Léger. She still wants nature to confirm her ideas about art, but the process is extremely complicated, because ideas about art are always in a state of flux, which must mean that nature is changing, too. There are realists who seek an inviolable truth that they can oppose to the relativism of modern art, but their neatly polished work suggests a refusal to see. Geiger is not without his conventional ideas, but at least he doesn't quite know what he's going to find, so that his work has an interesting spark.

More than anything else, it is Matthiasdottir's clearheadedness that sets her apart. In her recent still lifes, where she leaves much of the table bare, she's reminding us that the tabletop is as primary a rectangle as the canvas itself. This is the kind of consideration that

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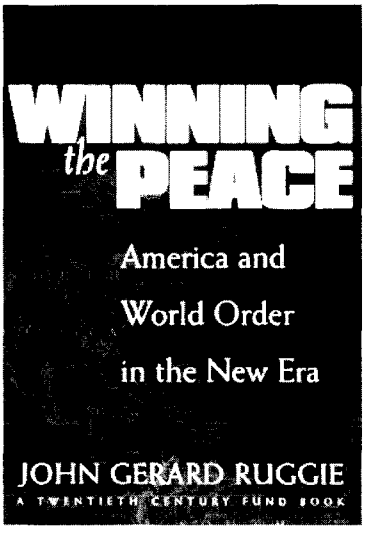

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you find in the very greatest still life painters, in Chardin, in Matisse. Is Matthiasdottir that good? Ashbery, writing in *Art News* all the way back in 1972, observed that her work "will be remembered long after the big names of this season or next season are as forgotten as those of the *pompiers* of yesteryear." I agree, but we're still waiting for the shakedown to occur. A quarter of a century has passed and many more "big names" have come and gone, and many people have still not had their first look at the work of an artist who came to New York when she was in her 20s. Through it all, she's stayed on course. In the recent still lifes, Matthiasdottir *does* bring Chardin to mind. You can't say that about any other painter who's working now. •

The principles (sort of) of Oliver Wendell Holmes.

Bet-tabilitarianism

By Louis Menand

I.

"Talks too much" was the comment on the first report card of Oliver Wendell Holmes Jr., the future Supreme Court justice and founder of the constitutional law of free speech. Wendy Holmes (as he was known to his intimates) was 6. He lived for another eighty-seven years, and no one ever accused him of keeping his views to himself. He opined regularly to dozens of correspondents, among them the English jurist Sir Frederick Pollock (their letters are collected in two volumes), the political theorist Harold Laski (two volumes), the Washington lawyer Felix Frankfurter (one volume, just published), the diplomat Lewis Einstein (one volume), the Irish priest Patrick Augustine Sheehan (one volume), the progressive journalist and eccentric Franklin Ford (one volume), the philosopher Morris Raphael Cohen, the Chinese jurist John Wu, the Japanese nobleman Kentaro Kaneko, and a stable of female confidantes that included Nina Gray, Alice Stopford Green, Baroness Charlotte Moncheur, and Holmes's Anglo-Irish paramour, Lady Clare Castletown, of Granston Manor, Upper Ossory, Ireland.

When Holmes's brothers on the bench—he served for twenty years on the Supreme Judicial Court of Massachusetts and for thirty years, beginning in 1902, on the Supreme Court of the United States—fell behind in the production of opinions, he begged his chiefs to reassign their cases to him. In the end he wrote over 2,000 opinions, still a record for judges sitting in courts of last resort. It was his habit, every few years, to refresh himself by traveling to England, leaving his wife behind, where he sought out the company of the leading philosophical and literary lights of the land, and where he flirted aggressively with most of the women he met, once going so far in his banter with the 12-year-old daughter of one of his hosts, Tom Hughes, the author of *Tom Brown's School Days*, that Hughes sent a letter afterwards demanding to know Holmes's intentions. He had none, except to experience once again the pleasure of his own flamboyance. "He would catch a subject, toss it in the air, make it dance and play a hundred tricks, and bring it to solid earth again," an English acquaintance described his social manner. "He liked to have the ball caught and tossed back to him, so that he could send it spinning away again with a fresh twist."

The Collected Works of Justice Holmes: Complete Public Writings and Selected Judicial Opinions of Oliver Wendell Holmes
edited by Sheldon M. Novick
(University of Chicago Press, three volumes, 345 pp., 500 pp., and 552 pp., $175)

Holmes's father, Dr. Oliver Wendell Holmes Sr., a pioneer of the germ theory of disease, the author of the patriotic poem "Old Ironsides," co-founder of *The Atlantic Monthly* (whose name he supplied), coiner of the term "Boston Brahmin," the first person to refer to Boston as "the Hub of the Universe," and dean of the Harvard Medical School, was said to have been the greatest talker of his day. He thought the talent worth acquiring and made it a rule that any child who uttered a clever remark at the dinner table should be given extra marmalade. Holmes Senior was 5'3" and round; his son, fully grown, was 6'3" and lean, and their relations were notori-

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ously fractious. But this was one trait that got passed along.

The law provided Holmes with a steady supply of occasions to exercise his gift for turning a phrase, but he did not allow the engine to idle. Early in his career, when he was in practice in Boston, he would walk into the office in the morning and announce to one of his firm's junior associates, "Mr. Evans, I am ready to contradict any statement you will make." Mr. Evans evidently felt it his duty, each morning, to oblige. Fifty years later, Holmes liked to tell his colleagues on the Supreme Court, when they were conferring about a case, that he would admit any general principle of law they proposed, and then use it to decide the case under discussion either way.

It was not persiflage, or it was not only persiflage. Holmes had a profound appreciation for the malleability of words, and that appreciation is the demon that sits at the bottom of his thought. His challenge to his fellow justices was not an excuse to show off his forensic dexterity; he was making a point about the nature of language. There have been hundreds of efforts since Holmes published *The Common Law*, in 1881, when he was 39, to sew a political label on him. Commentators have tried to prove that he was a progressive, a liberal, a civil libertarian, a democrat, an aristocrat, a reactionary, a Social Darwinist and a fascist. But none of these efforts has gotten to the core of what Holmes did, because all of them have mistaken the implications for the premises. They have focused on the accidents of his thought.

Calling Holmes a progressive or a reactionary is like calling, say, Wittgenstein a progressive or a reactionary. It assumes that he was interested in the political consequences of his ideas. But one thing that can be said with certainty about Holmes as a judge is that he almost never cared, in the cases that he decided, about outcomes. He did not read the newspaper, and he was utterly, sometimes fantastically, indifferent to the real-world effects of his decisions. He saw the law as a series of minutely varied, frequently boring, but sometimes delightfully nasty intellectual problems. These took the form, in his view, of concrete conflicts, each with some slight but potentially crucial point of difference from the rest, submitted for resolution by the ultimately absurd process of reasoning out a result from abstract principles.

From the very beginning of his career, Holmes regarded the reasoning part as factitious and, in its relation to the result, ex post facto. "It is the merit of the common law that it decides the case first and determines the principle afterwards," is the first sentence of the first legal article he ever published, "Codes, and the Arrangement of the Law" (1870), and he spent the next sixty-two years as a jurist and a judge trying to be faithful to this insight. That it was an impossible task by definition—as though one were to make it a principle never to rely on principles—seems only to have whetted his sense of sport.

Holmes repeated his view of the relation between reasons and results in the opinion that, after his opinions in the free speech cases, is his most celebrated, the dissent in *Lochner* v. *New York*, in 1905. "General propositions," he said there, "do not decide concrete cases." This is a radical assertion. For if principles do not decide cases, what does? Holmes's effort to answer that question led him, after many years, and somewhat improbably, to the free speech opinions which capped his career, and on which his reputation now rests. These three volumes of the *Collected Works*, which reprint all of Holmes's published writings except the judicial opinions (a selection of those will appear in two future volumes), make available some of the record of how he got there.

The volumes are edited by Sheldon M. Novick, whose *Honorable Justice*, which appeared in 1989, was the first full-length biography of Holmes to make use of all the archival material—a fact that is testimony chiefly to the speed with which Novick was able to take advantage of the opening, in 1984, of the Holmes Papers, after fifty years of failed attempts to get an official life completed. Mark DeWolfe Howe, a professor at Harvard Law School who had once served as Holmes's secretary, managed to finish two detailed and elegant volumes, *The Shaping Years* (1957) and *The Proving Years* (1963); but these take the story only to 1882, the mere brink of Holmes's fifty-year career as a judge, and Howe died in 1967.

Novick's biography, though serviceable as a narrative of Holmes's life, was notable for its relegation of virtually all discussion of Holmes's jurisprudential work to the footnotes, which sometimes assumed a rather disputatious tone. In his main text, Novick suggested that Holmes espoused "a kind of fascist ideology"; he described Holmes as "a violent, combative, womanizing aristocrat whose contribution to the development of the law was surprisingly difficult to define"; and he announced it to be his conclusion that Holmes was, in his jurisprudence, a structuralist—a judgment which can be called, among the many that have been offered about Holmes's work, unique.

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How Novick came to be the person chosen to put together the official edition of Holmes's writings by the trustees of the Holmes Devise (the fund established from Holmes's bequest of a portion of his estate to the government of the United States) is a mystery, as is the decision of the University of Chicago Press to publish the volumes in the form in which they appear. The first volume contains 333 pages of text; 198 are by Oliver Wendell Holmes and 135 are by Sheldon M. Novick. Most of these are devoted to a disquisition on "Holmes's Philosophy and Jurisprudence," with an ensuing "Critical Appraisal." This is a subject which has received continuous attention, at a pretty high level of critical inquiry, since about 1914. A bibliography of Holmes's scholarship (none is provided) might have served the purpose more economically and, in what is presented as a memorial edition, more tastefully. Still, though it took sixty years, this is how the job was done. (A marvelous one-volume reader of Holmes's articles, opinions, letters and speeches, *The Essential Holmes*, is also available from the University of Chicago Press, edited by Richard A. Posner, who confines his introductory remarks to twenty-two pages.)

II.

Novick's idea that Holmes was a structuralist belongs to a history that runs parallel to the history of efforts to define Holmes's politics. This is the history of efforts to define Holmes's philosophy. Holmes has been called a formalist, a positivist, a utilitarian, a realist, a historicist, a pragmatist and a nihilist. Commentators who cleave to one of these terms usually find themselves spending a good deal of time explaining why commentators who favor one of the other terms cannot possibly be right. This is generally an easier business than defending the term they prefer; and the reason is that none of these terms can possibly be right, because each singles out one aspect of the law as the essential aspect, and it was Holmes's genius as a philosopher to see that the law has no essential aspect.

A case comes to court as a unique fact-situation. It immediately enters a kind of vortex of imperatives. There is the imperative to find the just result in this particular case. There is the imperative to find the result that will be consistent with the results reached in analogous cases in the past. There is the imperative to find the result that, generalized across many similar cases, will be most beneficial to society as a whole—the result that will send the most useful behavioral message. There are also, though less explicitly acknowledged, the desire to secure the outcome most congenial to the judge's own politics, and the desire to use the case to bend legal doctrine so it will conform better with changes in social standards and conditions, and the desire to punish the wicked and excuse the good, and to redistribute costs from parties who can't afford them (like car accident victims) to parties who can (like car manufacturers and insurance companies).

Hovering over this whole unpredictable weather pattern—all of which is already in motion, as it were, before the particular case at hand arises—is a single meta-imperative. This is the imperative not to let it appear as though any one of these lesser imperatives has decided the case at the blatant expense of the others. A result that seems just intuitively but is incompatible with legal precedent is taboo; so is a result that is formally consistent with precedent but appears unjust on its face. The court does not want to seem to excuse reckless behavior (such as operating a railroad too close to a heavily populated area), but it does not want to raise too high a liability barrier to activities that society wants to encourage (such as building railroads). It wants the law to run in a politically desirable direction, but it

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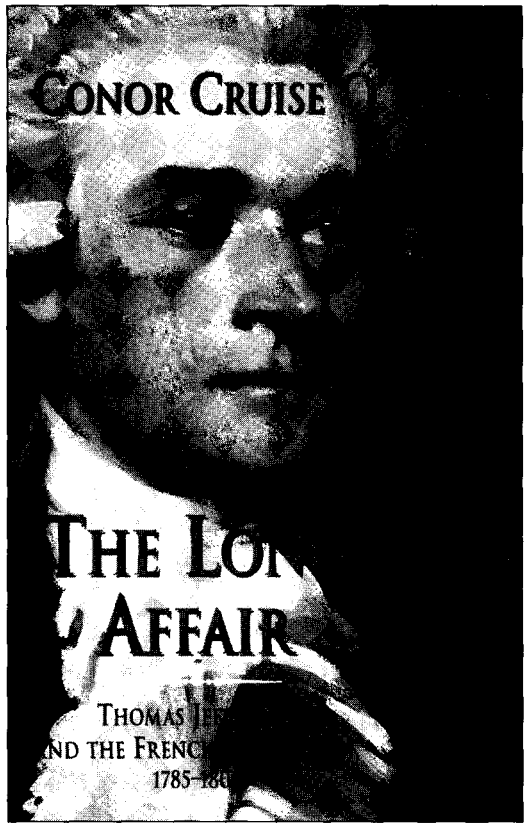
CONOR CRUISE O'BRIEN



"In O'Brien's view, Jefferson was far from the intrepid egalitarian he's been made out to be. Although the Virginia farmer-turned-statesman was drawn to the ideological mystique of the French Revolution . . . O'Brien argues that his revolutionary ardor 'cooled considerably when it collided with the needs of the slave-based Southern economy.' In O'Brien's opinion, it's time that Americans face the fact that Jefferson, long seen as a champion of the 'wronged masses,' was a racist who should not be placed on a pedestal in an increasingly multicultural United States."

—*Boston Phoenix*

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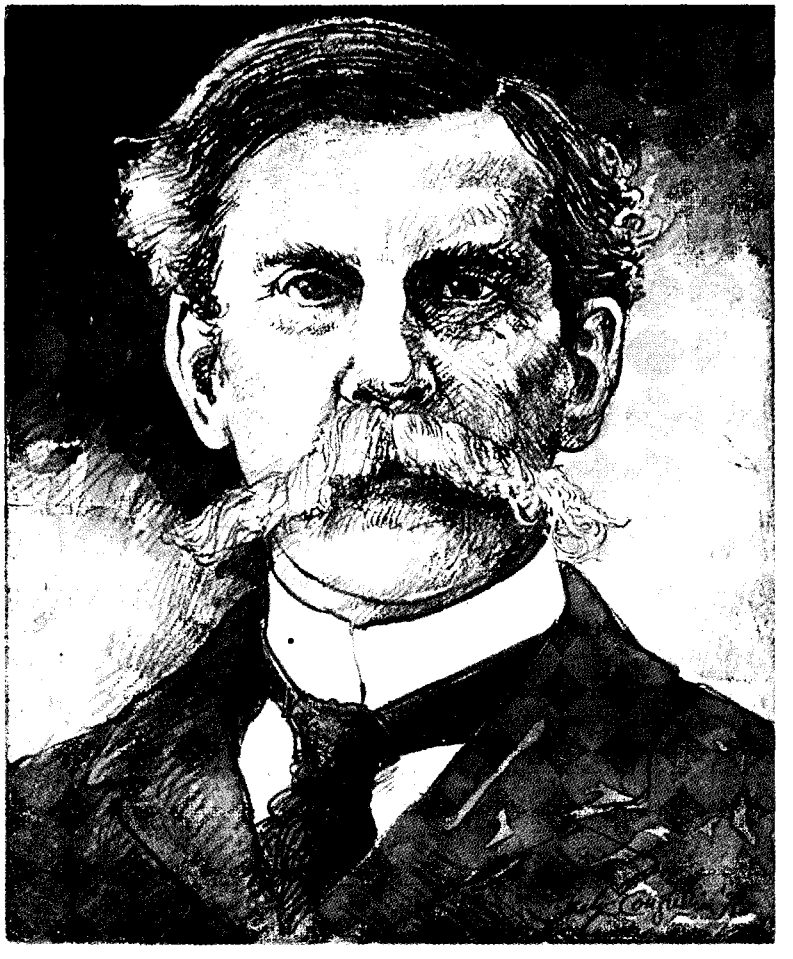
does not want to be caught appearing to bend an anachronistic legal doctrine in order to compel a politically correct result.

There is also, within each of these competing imperatives, the puzzle that Holmes's dictum about the nature of reasoning identified, which is the business of deciding what counts as relevant within that particular discourse and what does not. This series of problems begins with the question of what the legally relevant "facts" in the case really are; it runs through the questions of what counts as an analogous case, what counts as an applicable general legal principle, what counts as a benefit to society, and so on; and it ends with the question of what counts as a "just result." Holmes thought that there were no hard-and-fast distinctions in any of these areas; he believed that the answer always boils down to a matter of degree. And when he said that general propositions do not decide concrete cases, he was saying that, even if we were to select one imperative to trump all the others in our approach to judicial decision-making, we would still find that the consequences for any particular case were indeterminate. "Cost-benefit analysis" is as malleable as "rights talk." When there are no bones, as T.S. Eliot once said, anybody can carve a goose.

There are bones, though. For cases get decided and verdicts get returned and opinions get written, and by a process that does not seem arbitrary or self-interested to the people who do the deciding, returning and explaining. If the various discourses of fairness, policy, precedent, and so forth, are simply being manipulated rather than applied, they are being manipulated to justify an outcome which has been reached in obedience to some standard. When Holmes said that the common law decided the result first and figured out a plausible account of how it got there afterwards, the implication was not that the result was chosen randomly, but that it was dictated by something other than the formal legal rationale later adduced to support it. The purpose of *The Common Law* was to discover what that something was.

The book originated as a series of twelve lectures at the Lowell Institute in Boston, which Holmes delivered, to a packed hall, extemporaneously. It was the product of prodigious research—Holmes was regarded by his contemporaries as a frighteningly disciplined worker—and it has seemed to many competent commentators a kind of thicket of contradictory approaches, all bristling with pedantic details of legal antiquarianism and technical analyses of legal doctrine.



OLIVER WENDELL HOLMES BY JACK COUGHLIN FOR THE NEW REPUBLIC

The impression of methodological confusion arises from Holmes's unwillingness to see the law under just one aspect. He was suspicious of formalism—the extraction of abstract legal doctrines from the analysis of sequences of cases—which was the prevailing academic approach to the law at the time: earlier in his career, he had referred to Christopher Columbus Langdell, the dean of the Harvard Law School and the founder of the case method of legal instruction, as "the last living legal theologian." (Langdell was probably in the audience at the Lowell Lectures, and he offered Holmes a job anyway.) But Holmes had, in fact, praised Langdell's casebooks, and he used the case method himself when he taught at Harvard; and if there are formalist elements in *The Common Law*, it is because there are formalist elements in the law. Doctrinal continuity is, after all, something highly valued by judges; it is, at a minimum, the best hedge against reversal. At the same time, Holmes believed that the law was susceptible to a utilitarian analysis, since the law is also an instrument of social policy; to a moral analysis, since the law is a record of the conduct a society sees fit to penalize; and to an historical analysis, since the law has historical roots and evolves in response to changing social conditions.

Thus the celebrated sentence in the opening paragraph of *The Common Law*, "The life of the law has not been logic; it has been experience," does not say that there is no logic in the law. It only says that logic is not responsible for what is living in the law. The active ingredient in the compound, what puts the bones in the goose, is the thing called "experience." It is a word with a number of associations, but Holmes was using it in a particular sense. He meant it as the name for everything that arises out of the interaction of the human organism with its environment: beliefs, sentiments, customs, values, policies, prejudices—what he called "the felt necessities of the time." Our word for it (less satisfactory) is "culture."

Understanding Holmes's conception of "experience" is the key to understanding almost everything that is distinctive about his view of the law. Three features seem especially significant. The first is that experience is not, in Holmes's view, reducible to propositions, even though human beings spend a lot of time so reducing it. "All the pleasure of life is in general ideas," Holmes wrote to a correspondent in 1899. "But all the use of life is in specific solutions—which cannot be reached through generalities any more than a picture can be painted by knowing some rules of method. They are reached by insight, tact and specific knowledge." Even people who think their thinking is

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guided by general principles, in other words, even people who think thought is deductive, actually think the way everyone else does—by the seat of their pants. First they decide, then they deduce.

This is, obviously, the idea that stands behind the assertion, in *Lochner* and many other places in Holmes's writing, that general propositions do not decide concrete cases. Logical reasoning from a prioris is just not the way people make practical choices. Holmes thought that learning the abstract legal doctrines on which judicial decisions are expressly based—what used to be called "black letter law"—was therefore poor training for a lawyer. Judges do invoke these doctrines when they are explaining their decision, but (as Holmes was pointing out when he volunteered to use the same principle to decide a given case either way) the doctrines are never sufficient to account for the result reached. The hole always has a different shape from the arrow sticking out of it. So that anything that might operate as a motive for a judge's decision—a moral conviction, a political preference, even (as he put it) "the blandishments of the emperor's wife"—was, according to Holmes, legally material if it helped lawyers guess the result correctly.

This is the essence of the so-called "prediction theory of the law," expressed in Holmes's most famous essay, "The Path of the Law" (1897): "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Holmes was 56 when he wrote "The Path of the Law," and the starkness of its realism, the thoroughness with which it dismisses the notion that the law can be understood by reference to some higher system of morality or rationality, has seemed to some scholars—notably Morton Horwitz, in a stimulating contribution to Robert Gordon's excellent anthology *The Legacy of Oliver Wendell Holmes, Jr.* (1992)—to represent a loss of faith, on Holmes's part, in the moral cohesion, what Horwitz calls "the power of custom," of late-nineteenth-century American society.

But the prediction theory, at least, was not new to Holmes in 1897. It appears in one of his earliest essays, published in *The American Law Review* in 1872, where Holmes argued that it is not the law that determines the outcome in a particular case, but what judges *say* is the law. For "a precedent may not be followed; a statute may be emptied of its contents by construction.... The only question for the lawyer is, how will the judges act?" From the very beginning, Holmes's view of the law was premised on the assumption that law is simply and empirically judicial behavior. A rule may be written down, it may express the will of the sovereign, it may be justified by logic or approved by custom; but if courts will not enforce it, it is not the law, and lawyers who bet their cases on it will lose.

A second distinctive feature of Holmes's conception of experience is that it is not individual and internal but collective and consensual; it is social, not psychological. This is the feature responsible for his most important contribution to the civil law, which is the invention of the reasonable man. The reasonable man is the fictional protagonist of modern liability theory. If you are injured as a result of an act of mine, what triggers civil liability? There are, traditionally, three ways to answer this question. The first is to say that it is enough merely to prove causation: I act at my peril, and I am therefore liable for any costs my actions incur, whether I could have foreseen them or not. The legal term for this is "strict liability." The second way of answering it is to say that I am liable for your injury if I wickedly intended it, but cannot fairly be held liable for injuries I never contemplated. This is the theory of *mens rea*, "the guilty mind." And the third is to say that even if I neither wished for nor anticipated the possibility of your injury, I am liable to you anyway if my act was careless or imprudent. When I act recklessly, then I do act at my peril. This is the theory of negligence.

Holmes treated the problem of liability for injury in a series of dense and intense texts: "The Theory of Torts" (1873), "Trespass and Negligence" (1880), Lectures III and IV of *The Common Law* (1881), and "Privilege, Malice, and Intent" (1894), which is possibly his most brilliant essay. (It is, oddly, unrepresented in Posner's *Essential Holmes*.) Just what Holmes is saying in these discussions is a matter of apparently endless dispute, the most recent installments of which include G. Edward White's discussion in his enormous, learned and fascinating *Justice Oliver Wendell Holmes: Law and the Inner Self* (1993) and David Rosenberg's analysis, intended as a corrective to White and other interpreters, in *The Hidden Holmes* (1995).

The subject seems fraught in part because it is often hard to distinguish, in Holmes's writing, between the descriptive and the prescriptive—between what Holmes believed the law was in practice and what he thought the law ought to be. Holmes didn't do a lot to help his

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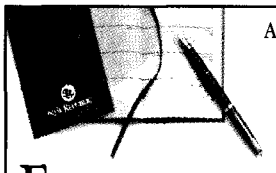

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readers make this distinction, but the reason is that his favorite method of argument was to show that what the law ought to be is what it pretty much already is, only under a wrong description. In the case of tort law (the common law governing civil liability for an injury not arising out of a contract), Holmes argued for answer three—liability ought to be triggered by a finding of negligence—but he did so by attempting to demonstrate that negligence was already, and more or less always had been, the rough basis for tort liability. He argued, in other words, that if in our analysis of tort cases we dropped terms like "guilt" and "fault" and replaced them with terms like "carelessness" and "recklessness," we would find that we generally got the same results.

The advantage of replacing the moral language of sin with the economic language of risk was not to punish a different class of wrong-doers or a different category of wrongs. It was simply to make explicit what moral language tends to disguise, which is that (in the words of *The Common Law*) "the substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient"—a sentence in which, as the context makes clear, we are meant to understand "convenient" in the widest possible sense.

The problem for Holmes wasn't what the basis for tort liability ought to be. The problem was what the basis for deciding that a particular act was negligent ought to be. Assuming that we want to make persons who act recklessly or carelessly pay the cost of cleaning up their tortious messes, how do we determine what sort of behavior counts as reckless or careless? How do we distinguish a tort from an accident, or from the permissible by-product of a socially desirable activity? One way of doing this would be to devise a series of general rules for conduct, violation of which would ipso facto constitute negligence; but this solution was obviously ruled out for Holmes by his contempt for general rules. His alternative proposal was that we should do judicially what we all do anyway when we are confronted with what we now describe as a "judgment call," which is to evaluate the conduct at issue by the lessons of experience. "Experience is the test," as he put it in *The Common Law*, "by which it is decided whether the degree of danger attending given conduct under certain known circumstances is sufficient to throw the risk upon the party pursuing it."

Whose experience? The experience, Holmes said, of "a prudent and intelligent man." He didn't mean by this a particularly prudent and intelligent person—say, a judge. He meant, precisely, a person who is neither particularly prudent nor particularly imprudent, an "average member of the community"—in other words, a jury. "When men live in society," he explained in *The Common Law*, "a certain average of conduct, a sacrifice of individual peculiarities going beyond a certain point, is necessary to the general welfare. If ... a man is born hasty and awkward, is always having accidents and hurting himself or his neighbors ... his slips are no less troublesome to his neighbors than if they spring from guilty neglect. His neighbors accordingly require him, at his proper peril, to come up to their standard, and the courts which they establish decline to take his personal equation into account." Putting it this way made blameworthiness, Holmes thought, into what he approvingly called "an external standard," a standard before which the defendant's state of mind (a legal imponderable anyway) becomes irrelevant. "A man may have as bad a heart as he chooses," as he put it in "Trespass and Negligence," "if his conduct is within the rules."

"The reasonable man" is the phrase commonly associated with this theory of liability. Holmes didn't coin it—it began appearing in American and English opinions around 1850—but, along with his English friend Frederick Pollock, he probably did as much as anyone to define and establish it. What makes the concept work (on Holmes's theory) is that it represents a composite. It is a collective noun, a statistical fiction, an averaging out across the whole population. The "reasonable man" knows, because "experience" tells him, that a given behavior in a given circumstance—say, taking target practice in a populated area—carries the risk of injuring another person. Of course, any action in any circumstance carries some risk, however remote, of injuring another person; and reasonable people know this. But this knowledge is not what reasonableness consists in. What reasonableness consists in is the knowledge of the greater or lesser probability of an injury being caused by such and such an action in such and such circumstances. "Even in the domain of knowledge," as Holmes put it, "the law applies its principle of averages."

By putting negligence at the center of tort liability, Holmes got accused, by some twentieth-century commentators, of making it easier for industry to escape liability for injuries, to workers or customers, incidental to its enterprise—injuries for which it would have had to pay under a theory of strict liability. As Rosenberg points out in *The Hidden Holmes*, though, Holmes did accept a principle of strict liability for what he called "extra-hazardous" activity. Under this principle, a company that uses dynamite in the normal course of its business can be held accountable for any injuries it causes, even if it has taken reasonable precautions to avoid them. But Holmes didn't regard strict liability as inconsistent with the concept of reasonableness, or even with the concept of negligence; for the activities society labels extra-hazardous are just activities experience has led the reasonable man to believe to be risky per se. "Negligence" is infected a little by the kind of moral coloration Holmes deprecated in legal language: it suggests a personal failing on the part of the defendant. But all Holmes meant by it was acting in the face of foreseeable risk. We may have perfectly honorable reasons for doing so, but we also have to be willing to take our legal chances.

When Holmes remarked, therefore, in "The Path of the Law," that although "for the rational study of the law the black-letter man may be the man of the present ... the man of the future is the

The Mote in the Eye

The wind instructs the rain: to soak chapeaus
and sprung umbrellas; to flit at light like moths;
to sift the soil; to swell; to lap at windows—
O tiresome monsoons, O sodden months.

The rain instructs the wind: to understand
its gravity; to chip at limestone churchyards;
to sweep its bric-a-brac across the sand,
across the white-patched wings of mockingbirds.

But half the lesson is what isn't taught.
I say the wind will not instruct the rain
in how the sea will stagger and hiss ashore.

O rain, do not instruct the wind that it
is not, in fact, the mouth of the hurricane—
let one betray the other, unaware.

—after João Cabral de Melo Neto

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man of statistics and the master of economics," he meant that the more it became obvious that legal liability can be thought of as a function of the probability of injury, and that courts will weigh the cost of avoiding such injuries against the social benefit of the activity in question, the more irrelevant a knowledge of formal legal doctrine would be to the ability to predict what courts will do. In his theory of torts, Holmes did what Darwin did in his theory of natural selection by chance variation and Maxwell did in his kinetic theory of gases: he applied the great discovery of nineteenth-century demography, which was that the indeterminacy of individual behavior could be regularized by considering people statistically at the level of the mass, to his own special field.

III.

The advantage of the "reasonable man" standard (in Holmes's view) is that it regularizes the business of evaluating conduct without locking courts into the application of codified principles guaranteed to break down whenever they are confronted with a hard case, or with a mutation in social custom. The disadvantage is that, in practice, juries are not always consistent. This group of twelve may regard as reasonable what that group of twelve regards as reckless. Holmes did think that since in many tort cases the facts, legally speaking, are essentially the same, judges, having seen the way juries generally dispose of such cases, should be able to determine liability as a matter of law. And in his own career as a judge, he did occasionally try to establish such common law rules, usually with disastrous results. The most famous of these is the Supreme Court case of *Baltimore & Ohio Railroad* v. *Goodman* (1927), which arose out of the death of a motorist at a railroad crossing where his view of the track was obstructed. Holmes overturned a decision for the plaintiff on the principle (newly laid down by him) that a motorist arriving at a railroad crossing has a duty to stop the car, get out, and look up and down the track before proceeding. "It is true," Holmes explained, "that the question of due care very generally is left to the jury. But we are dealing with a standard of conduct, and when the standard is clear it should be laid down once for all by the courts." Holmes did not drive. After his retirement from the court, the rule was thrown out by Benjamin Cardozo.

Holmes was wrong in *Baltimore & Ohio Railroad* v. *Goodman*, but he was wrong on his own theoretical ground. It just happens not to be the custom to get out of the car at railroad crossings; and therefore it was almost certainly not (as Holmes probably suspected) sympathy for the widow Goodman that dictated the lower-court result, but, precisely, the application of the community standard of what it is reasonable to do at a railroad crossing. Holmes did not mean to contradict his own argument against reliance on abstract principles; he only meant to increase the degree of predictability in tort law. And this emphasis on predictability is tied to the third significant element in Holmes's idea of "experience," which is what might be called the imprecision factor.

"The loss of certainty" is a phrase many intellectual historians have used to characterize the period in which Holmes lived. But the phrase has it backwards. It was not the loss of certainty that stimulated the late-nineteenth-century thinkers with whom Holmes associated as a young man—William James, Charles Peirce and the Cambridge guru Chauncey Wright, who coined a phrase Holmes loved: "cosmic weather." It was the discovery of uncertainty.

Holmes was, in many respects, a materialist. He believed, as he put it, that "the law of the grub is also the law for man." And concerning the hope of social betterment, he was something worse than a

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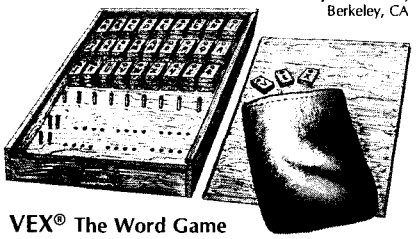

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pessimist: "I despise the upward and onward." But he was not a determinist, since he did not think that the course of human events was fixed—or that if it was fixed, we could reliably know anything about it. Complete certainty was an illusion; of that he was certain. There were only greater and lesser degrees of certainty, and that was enough. It was, in fact, better than enough. For, although we always want to reduce the degree of uncertainty in our lives, we never want it to disappear entirely, since uncertainty is what puts the play in the joints. Imprecision—the whimsicality, as it were, of the quanta—is what makes life interesting and change possible.

Holmes liked to call himself a "bet-tabilitarian": we cannot know what consequences the universe will attach to our choices, but we can bet on them, and we do it every day. Holmes believed that experience is the only basis we have for guiding our affairs, but he also believed that experience is too amorphous, or too multiple, ever to dictate a single line of conduct. Experience makes everything blurry at the edges; it reduces knowledge to a prediction of what should be the case most of the time, and we treat a prediction as an absolute at our peril. We start, in the law, with a principle or a concept that seems to help us decide the great mass of cases, and we therefore begin to assume this concept as fundamental. But as we move out toward the marginal cases, we begin to find that the concept actually rests on a whole submerged structure of other concepts, policies, intuitions, practices and assumptions, and at a certain point we discover that it has become emptied of predictive force.

Sic utere tuo ut alienum non laedas, for instance, is an old maxim of common law generally interpreted to mean that people are required to use their property in a way that will not injure the property of another. This sounds unexceptionable, in law and in morals. But it is a principle, Holmes argued in "Privilege, Malice, and Intent," that "teaches nothing but a benevolent yearning." If I burn down the mom-and-pop candy store around the corner, it is true that I will be held liable for the damage. But (to use one of Holmes's favorite examples) if I set up my own candy store right next door and, by deliberately underselling them, bring mom and pop to heartache and financial ruin, ultimately driving them homeless into the night, the law, although the consequences of my behavior are effectively the same, will be indifferent.

Holmes's perception here was not that we are hypocritical in punishing the first behavior and countenancing (not to say encouraging) the second. His perception was that we cannot make our way by universalizing our principles: it is always the underlying context that gives them force, and it is in the nature of contexts to shift. Nearly all Holmes's greatest moments as a judge arose from this perception. It is at the bottom of his most famous opinions, the dissents in the free speech cases of *Abrams* v. *U.S.* (1919) and *Gitlow* v. *New York* (1925)—though there is something else interesting about those opinions, too, which is that, in order to write them, Holmes had to overcome an innate resistance to the very idea of a right to free speech, a resistance which was based on a principle of his own.

IV.

That principle was actually a kind of an anti-principle. Holmes was a lifelong enemy of the concept of natural law, of the notion that individuals retain certain rights against the state, simply by virtue of being human. There are, Holmes thought, no such immutable and universal rights. What we take to be rights are only customs that have become settled enough to seem inevitable. "As an arbitrary fact people wish to live," he wrote in "Natural Law" (1918), "and we say with various degrees of certainty that they can do so only on certain conditions.... But that seems to me the whole of the matter. I see no a priori duty to live with others and in that way, but simply a statement of what I must do if I wish to remain alive. If I do live with others they tell me that I must do and abstain from doing various things or they will put the screws on to me. I believe that they will, and being of the same mind as to their conduct I not only accept the rules but come in time to accept them with sympathy and emotional affirmation and begin to talk about rights and duties. But for legal purposes a right is only the hypostatis of a prophecy—the imagination of a substance supporting the fact that the public force will be brought to bear upon those who do things said to contravene it."

In 1918, this was the creed of a liberal. For the rights that Holmes had in mind were "the right to property" and "liberty of contract," rights which the courts had, in the view of political progressives, invented in order to declare unconstitutional legislation intended to regulate the workplace. In *Lochner* (1905), the Court had voided an act of the New York State legislature that limited, on grounds of public health, the number of hours employees could work in a bakery—a

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decision the majority based on the putative right, constructed out of the Fourteenth Amendment, to liberty of contract. Holmes, in his dissent, had argued not merely that the Fourteenth Amendment did not enact the liberty of contract, but that reading liberty of contract into the language of the Fourteenth Amendment short-circuited the very thing the law was supposed to allow for, which was the flexibility to adapt to circumstances as circumstances change. "A constitution is not intended to embody a particular economic theory," as he put it, "whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."

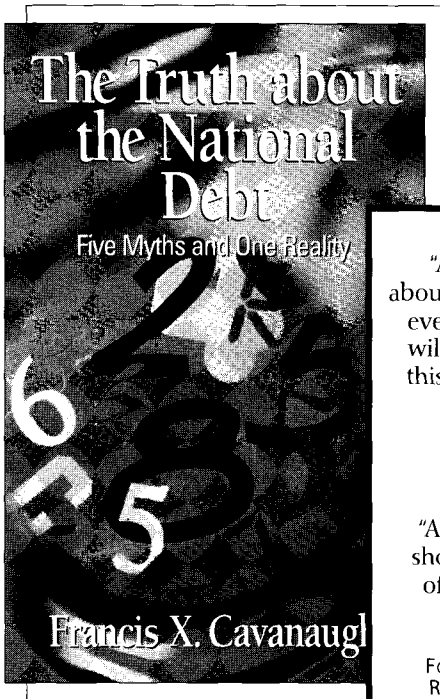
This belief—that the Constitution is designed to allow the majority to experiment, at the expense of the interests of individuals, with different social theories and arrangements—made it easy for Holmes, in 1919, the year after his essay on "Natural Law" appeared, to write three opinions for the Court sustaining convictions under the Espionage Act. The convictions (one was a ten-year sentence for Eugene Debs) were for expressing opinions calculated to encourage others to interfere with the American war effort—for example, by resisting the draft. They were cases, in other words, in which speech had been judged to constitute an incitement to a criminal act. It was in these opinions that Holmes formulated what has come to be known as the "clear and present danger" test for the prosecution of speech: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent," he wrote, in *Schenck* v. *U.S.*: "It is a question of proximity and degree."

The "clear and present danger" test has received a good deal of criticism from commentators who find it insufficiently protective of speech—most recently from Gerald Gunther, in his great biography *Learned Hand: The Man and the Judge*. In 1919, Hand was at the beginning of his long career as a federal court judge. His regard for Holmes was virtually unadulterated: he considered Holmes, he once said, "the epitome of all a judge should be." But Hand thought that Holmes's formulation in *Schenck* was too broad. Two years earlier, Hand had written an opinion, in *Masses Publishing Co.* v. *Patten*, enjoining the New York Postmaster from refusing to circulate Max Eastman's journal *The Masses*, arguing that speech can only constitutionally be suppressed or punished when the words used explicitly counsel a violation of the law. *The Masses*, he believed, was being persecuted for its politics under cover of what would otherwise be an acceptable state effort to prevent interference with the war effort. "To assimilate agitation, legitimate as such, with direct incitement to violent resistance," Hand said, "is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government." (His decision was quickly overturned.)

Hand believed that his construction provided narrower and more "objective" grounds for the prosecution of speech than Holmes's did; and in conversations and letters he tried to convince Holmes to adopt it. Holmes was persuaded (by Hand and others) to regard some prosecutions under the Espionage Act as unconstitutional, as he did the following term in the *Abrams* case; but he was never persuaded to adopt Hand's formula, and he even claimed not to see Hand's point. "I don't know what the matter is, or how we differ," he complained in a reply to one of Hand's letters.

The matter was that under Holmes's rule liability hinges on the probability that the evils Congress wishes to prevent will happen as a consequence of the speech in question, and this probability cannot be merely a function of the "objective" meaning of the words uttered. It is not strictly a matter of meaning, in Holmes's formulation; it is a matter of proximity and degree. In the shower I may counsel resistance to the draft as explicitly as I like; but out of the shower, and before an audience of potential conscripts, I may communicate the same advice in language that never quite reaches the level of explicitness that Hand's test requires, but that has the intended effect nonetheless. There are many ways to skin, linguistically, a cat. Gunther is correct to claim that Hand's formula is much more speech-protective than Holmes's. But Holmes's is much more language-sensitive.

Holmes's theory of free speech rests on the assumption that informed his whole approach to liability generally, which is that the community can, given the facts, judge when speech crosses the line of expression and becomes incitement. Whether this is an attractive theory or not from a civil libertarian point



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of view, it is consistent with Holmes's belief that experience conditions language (and everything else) in unpredictable ways. We don't know in advance what words will constitute an illegal incitement and what words will not. We have to measure the intent of the speech by Holmes's usual standards: by context and by experience.

The trouble is that every expression is, by those standards, potentially harmful. It is, as Holmes said, only a question of degree. "Every idea is an incitement," as he admitted in the dissent in *Gitlow*. "It offers itself for belief and if believed is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason." This is almost the language of an enemy of free speech, for it proposes that when we ask a court to weigh the probable effect of the speech in question by experience, we are taking a chance that the mere loathsomeness of speech will be excuse enough to find liability, which is just what Hand feared.

But Holmes thought that dominant opinion would contrive a way to suppress what it regarded as evil no matter what the legal foundation. And he liked the idea of risk. And, of course, he was not an enemy of free speech. His opinion in *Schenck* and his dissents in *Abrams* and *Gitlow* were fundamental to the establishment of First Amendment law. Still, Holmes was able to write those opinions not because he was suddenly convinced of the inalienability of the right to freedom of expression, but because he saw in those cases a corollary to his principled aversion to faith in principles. He managed to articulate a rationale that had the effect of making free speech a basic right without ever invoking the idea of natural law.

His most celebrated opinion is probably the dissent in *Abrams*. He argued there that the speech being punished under the Espionage Act (twenty-year sentences to Bolshevik sympathizers for throwing pamphlets from a factory window in Manhattan) could not plausibly be claimed, under the circumstances, to constitute an imminent danger to the war effort. The defendants, he thought, were being punished simply for holding views offensive to the majority; and the danger represented by their prosecution was analogous to the danger he had identified in *Lochner*: the danger of mistaking a general sentiment for a truth. It read into the way we happen to live a certainty about the way people ought to live. It was, in a word, unbet-tabilitarian. Even the Constitution, Holmes said, is a bet we may lose. "It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge." It is the motto of a man who thought that there is no final word, there is only a better way of putting it. •

Sense and Sensitivity

BY ALAN WOLFE

The Repeal of Reticence: A History of America's Cultural and Legal Struggles Over Free Speech, Obscenity, Sexual Liberation, and Modern Art by Rochelle Gurstein

(Hill and Wang, 357 pp., $27.50)

"The Sex Side of Life": Mary Ware Dennett's Pioneering Battle for Birth Control and Sex Education by Constance M. Chen

(New Press, 374 pp., $25)

American politics, any country's politics, are shaped by a clash between a party of order and a party of change. At some deep level these parties persist, though on the surface their names change: the Republicans were conservative a generation ago and they are now proudly radical. Since politics involve the distribution of material rewards, it generally suffices, in accounting for the party to which any given interest attaches itself, to know whether a given policy will increase or decrease its wealth and its power. There is drama in politics, but relatively little mystery, which is why accounts of ancient Athens or Machiavelli's Florence are still pertinent.

But culture also has two parties. Rochelle Gurstein calls them the party of reticence and the party of exposure. At stake in clashes over culture is not the distribution of material things, but the definition of what we value. One party upholds modesty, discretion, grace, shame, honor, vulnerability, refinement, privacy and character; the other party upholds brashness, rationality, science, enlightenment, democracy, equality, improvement and liberation. And there will always be interests in culture as there are in politics; Richard Hofstadter made it a point to uncover the winners and the losers in contests over status as a way of explaining battles over culture. But something about the seriousness of cultural questions makes such reductionism cheap. Cultural politics contain mystery as well as drama, since the questions are murkier, and there is no easy way to know who will be on what side. (Some advocates of equality for women now adhere to a party of reticence which once was held to oppress women.)

Gurstein's thesis is that, with a few generally misguided exceptions (such as women against pornography), our war over culture has been transformed into a one-party system. The party of reticence has simply disappeared. It has been laughed into embarrassment, she believes, by modernity's emphasis on knowledge and the care for the self. Gurstein offers a history of how this happened, with the clear intention of trying to revive a party of reticence for contemporary America.

Who is, or was, the party of reticence? Gurstein's account begins with writers such as Charles Eliot Norton, E. L. Godkin and Henry James, for whom taste and good manners, if nothing else, demanded that one never poke too closely into the affairs of other people. Gurstein makes much of James's neglected novel *The Reverberator*, in which the difference between the refined Europeans and the crass Americans hinges on the ways they respond to unwanted publicity. In James's novel, the European Proberts

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are aghast at "the flood of impudence on decent, quiet people who only want to be left alone," while the American Dos-sert believes that "if folks are immoral you can't keep it out of the papers—and I don't know as you ought to want to." James, of course, went to Europe, but Norton, Godkin and innumerable oth-ers brought Europe to America. In this rough and ready democracy, they argued for classical proportionality, rigorous rules of decorum, *bildung, noblesse oblige.* For them, privacy was not a right but a duty. Gentlemen, as Henry L. Stimpson famously put it, do not read each other's mail.

Gurstein recognizes the anti-democratic sentiments of these writers, but she treats her aristocrats with more respect than they deserve. The case for an American party of reticence is a weak one. Gaston Probert in *The Reverberator* does get his American bride. And the other writers whom Gurstein cites are more historical curiosities than seri-ous thinkers. The modern world already has one Matthew Arnold, and it is not clear how much is gained by exhuming second-rate versions. If ever Hofstadter's method of reducing ideas to a declining class position were justified, it would be for pompous would-be aristocrats such as them. Reading what Gurstein's ob-scure nineteenth-century critics had to say about "commonplace" people "with-out acquired culture or accomplish-ment" leading "trivial" lives, I would wel-come a return to their sensibility about as much as I would a return to dueling.

Still, Gurstein is correct that we generally do not hear such language today among our intellectuals. Her book examines three trends which under-mined the culture of reticence: the popular press, realistic fiction and the progressive science of sexology. To aris-tocratic critics, mass journalism was treated, at least metaphorically, as if it were bubonic plague. They objected to invasions of privacy, made more poign-ant by the fact that it was their privacy, the privacy of their class, which was under siege. Novels that purported to deal with real people crossed class lines the way writers in our day cross gender lines, and with the predictable conser-vative reaction. And if William Dean Howells was correct that things should be called by their real names, then romance and seduction—usually treated in code—would have to give way to the clinician and physiologist.

By the first two decades of the twenti-eth century, the cultural radicals were no longer content merely to criticize the reticent sensibility. For Margaret Sanger and Emma Goldman, saving lives was the issue, and those whose morality stood in the way of their crusades for birth control were charged with the most heinous of crimes, thereby com-mencing the left's unfortunate tendency to castigate those who disagree with them as not merely wrong but also as sick or misguided. The most obnoxious of these radicals was Theodore Schroe-der, whose book *"Obscene" Literature and Constitutional Law* (1911) anticipated, as Gurstein rightly emphasizes, every tac-tic that the party of exposure would use to bludgeon its way to cultural domi-nance. Schroeder's quotation-marks rad-icalism simply dismissed problems such as dirty books out of hand. Relying on advanced forms of cultural relativism, he argued that, there being no such thing as obscenity in reality, whatever bothered its opponents could only be in their minds.

Cultural revolutions, like political ones, devour their own children. One fascination of Gurstein's story is the way radicals of one generation became the conservatives of the next. William Dean Howells, dismissed by twentieth-century critics as a sentimentalist, was a realist of his time; H.L. Mencken, leader of smart-set bohemia, came to abhor sex hygiene manuals; and Walter Lippmann the re-former became Walter Lippmann the appreciator of mysteries that can never be fully known. Cultural radicalism could not stop, Gurstein argues, owing to its affinity with law. As debates over obscen-ity moved into the courts, America's commitment to free speech guaranteed that the rights of individuals to read and to publish what they wanted would win out over a community's concern with decency. The end was precisely what the aristocrats of the nineteenth century foresaw: a decline of taste. This is Gur-stein, not E. L. Godkin or Charles Eliot Norton, denouncing Susan Sontag for her essay on "The Pornographic Imagi-nation":

> At bottom, there burns a hatred of distinc-tion and, with it, a rage to violate privacy, revel in baseness, and extinguish conscious-ness of difference. Invasive journalists, por-nographers—"high" and "low"—and their rapacious audiences want to drag everyone down—not just the high and mighty or the accomplished few, but also themselves—to the equality of the condition of having a body, where no one can escape the pull of biological necessity.

A culture that allows every-thing respects nothing. For most of its history, our society repressed the mys-teries and the beauties of sex by for-bidding representations of them; but we moderns have discovered the more

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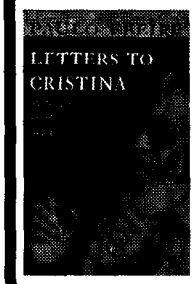

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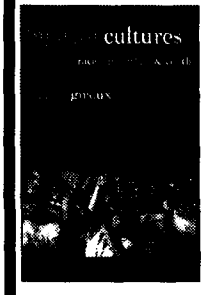

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effective method of representing them everywhere. Artistic creation, once stultified by ignoring genius, is now kept in check by the testimony of experts that any utterance or expression may have unrecognized genius lurking within it. The news media offer so much news that most Americans have no inkling of what is happening in the world. Gurstein's instincts are the right ones. The only reticence that we seem to have left is a general failure to appreciate the unspoken, the unknown, the unseen.

Still, however repulsive we may find Mapplethorpe's photographs, however wrong-headed we may think the Supreme Court in extending free speech to corporate advertising, however bothered we may be by efforts to teach respect for homosexuality in public schools, do we really want to go back to an era before women's suffrage, legal recognition of the First Amendment, or Freud and Darwin? It turns out that Gurstein is not that certain, either. The culture of reticence, she writes, is something that "we must recover—even if we reject it anew. . . ." "It is worthwhile to reconsider whether the old defenses of modernist novels such as *Ulysses* or *Lady Chatterley's Lover* should continue to receive automatic endorsement," though she does not engage in that reconsideration.

The strongest terms that Gurstein can find to make her case are consequentialist ones: there are "good reasons" for believing that exposure and emancipation represent progress, but among the consequences is a reversal of public and private. "Intimacy—which, for moderns, is supposed to provide the deepest meanings—has become stripped of the privacy it needs to flourish," while "an equally unexpected and disastrous outcome of the victory of the party of exposure" is the fact that without a sense of shame, taste, judgment and reverence, our public sphere is "utterly vacant." The language of politicians and media personalities is one of love and caring, while the language of romance is one of technique or harassment, if not of epidemiology. What is really at stake in our battles over culture is "the quality and character of our common world and the fragility of intimacy," and the party that believes in both is losing.

If all this sounds like a bit too much Hannah Arendt, that's because it is. Gurstein believes that Arendt's thoughts on how the ancient Athenians valued public goods and relegated private ones to the inferno of the household actually describe what really happened to real people. Predisposed to big concepts, Gurstein also relies on Mary Douglas and Alasdair MacIntyre, the kind of writers who propose to explain a thousand years of history or a hundred different cultures by means of a single well-wrought dichotomy. Gurstein, too, is seduced by dichotomies, and so she neglects what an historian can offer these important discussions: a sense of how and why American thinking did indeed shift from appreciating modesty to trumpeting publicity. Yes, there were advocates for exposure, many of whom ran roughshod over conventional sensibilities. But surely part of the reason for their success was the existence of a very large number of people willing to buy their books and to listen to their advice.

Gurstein portrays the party of exposure as an elitist party, one with designs on the innocent (and generally passive) American, who wanted only to live in peace with family and friends. One reason to question such an interpretation is its neglect of human curiosity. We seem to possess an insatiable appetite for learning the intimate details of others, especially the rich and the famous. One could even say that these matters are governed by an implicit and well-understood contract: since other people recognize you, being famous makes your life interesting, but since other people recognize you, you have to sacrifice your privacy. Celebrities who moan about the trade-off, like aristocrats of the nineteenth century, can hardly be taken seriously.

Besides, Americans are not only curious about others, they are also natural exhibitionists, as we have learned in the age of Oprah. Self-exposure fits uneasily into Gurstein's morality tale, since no one can plausibly claim that people who expose themselves are being manipulated by a new class interested only in invading the privacy of others. I dislike daytime television as much as the next intellectual, perhaps even as much as Gurstein; but anti-democratic it isn't. One reason why the party of exposure wins many battles is that it offers something that most people want.

There is still another reason why Gurstein's interpretations are askew, and it is by far the most serious. If it is theoretically possible to know too much about the body—our society has proven that it is—then it is also possible to know too little about the body. In their contempt for modernity, nostalgic writers tend to forget about advances such as the discovery of penicillin. Much the same could be said for sex education. According to Gurstein, 1930 was a crucial year in the victory of the party of exposure, when the Second Court of Appeals unanimously upheld the right of Mary Ware

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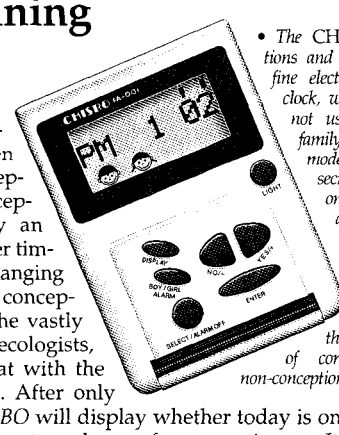

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Dennett to publish her pamphlet *The Sex Side of Life: An Explanation for Young People*, effectively bringing to an end all efforts to include sex instruction as part of the legal definition of obscenity. (This is not correct: it was Augustus Hand's decision in *United States* v. *One Package*, decided six years later, which permitted doctors to distribute birth control information through the mail.) Gurstein spends considerable time on Dennett, and all the flaws of her analysis are revealed.

In Gurstein's account, Dennett's pamphlet "contained the seeds of many future unanticipated developments." By taking her side, the Court lent its support to a new consensus "which held that information about sexual hygiene was essential to the well-being of young people." In so doing, the Court, as Gurstein would have it, ran roughshod over "considerations of the inherent fragility of intimate life, the tone of public conversation, standards of taste and morality, and reverence owed to mysteries." Alas for Gurstein, Constance Chen's fine biography of Dennett has been published almost simultaneously with *The Repeal of Reticence*, and it makes clear that Gurstein's account of how we lost our innocence cannot stand up.

Chen came upon Dennett's papers at Radcliffe College and delayed her entry into medical school to write the story of Dennett's life. Attracted to Dennett the public figure, Chen discovered a more interesting private life. Mary Ware, it turns out, was a product of the reticent class of New England aristocrats praised by Gurstein. Her husband was a protégé of Charles Eliot Norton who imagined himself an idealist like Ralph Waldo Emerson. Hartley and Mary Dennett devoted themselves to all the fashionable fads of the day, including the Anti-Imperialist League, the Single Tax League, and the Society of Arts and Crafts. When Hartley took up with another woman in the family's circle, he remained convinced that whatever he did was moral, since he had the right views. The high-minded Hartley Dennett comes across in Chen's book as a first-class son of a bitch. If this is *fin-de-siècle* idealism, we are better off with mass democracy.

Chen narrates the private trouble of Mary Ware Dennett grippingly—far better, in fact, than she does the public figure, whose devotion to feminism and sex education was clearly connected to her bizarre marriage. Dennett the activist was anything but a cultural radical, retaining her reticent sensibility even at the height of her birth control career. Shaken by the interest of the press in her highly publicized divorce, Dennett, as Chen puts it, "had a deep-seated aversion to publicity," unlike Margaret Sanger, who possessed a genius for self-promotion. Stiff and unbending, Dennett was so proper that, when desperate women wrote to her for birth control advice, she would respond by telling them that she was prevented by law from providing it—a demonstration of rectitude that masked incredible cruelty to innocent people in difficult situations. No wonder that when she wrote her pamphlet it was as Bostonian as a sex hygiene manual could be. Dennett frowned on masturbation as a waste, denounced prostitution, warned against venereal disease, romanticized marriage and never mentioned homosexuality. The YMCA and numerous clergy ordered her work in droves.

It is obvious, in the context of the times, that any effort to persecute this grandmother would fail. Such was the lack of information about basic sexual anatomy, let alone abortion and birth control, that people's lives were being ruined. Faithful wives became victims of venereal diseases transmitted to their husbands by prostitutes. Women, including Dennett herself, were at the risk of dying from unwanted pregnancies. Children had nowhere to turn to satisfy their hormonal curiosity. The success of Den-

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nett's pamphlet was a vindication of the desire of ordinary people—often prevented by church, community and (for women) their husbands, from learning about their bodies—to take a relatively small step toward self-discovery.

In the face of these real-world concerns, Gurstein's blithe treatment of the case is as cruel as Dennett's response to pleas for help. Of what possible value can reticence be, if the price of it is brutality? Gurstein's dismissal of this very moderate effort to blend the nineteenth-century language of refinement with a twentieth-century need-to-know raises the question of whether, for her, there exists anything about which reticence might be the wrong response.

Like her mentor, Christopher Lasch, Gurstein's style is high Whiggism in reverse: modernity is one continuous evolutionary descent from an earlier wisdom. But can we really believe that matters as emotionally charged as intimacy, privacy, creativity, manners, taste and judgment can ever be understood melodramatically? There is tragedy in modernity's history, but it is not the tragedy of unrelenting decline. It is rather that human beings need enlightenment *and* mystery; that they are desperate to know *and* to believe. And so they will find little help from intellectuals who, if they are not lecturing them on how backward is their piety, are instead condemning them for trying to figure a few things out.

When it comes to writing about the culture war, the only thing forbidden, it seems, is nuance. This Gurstein sorely lacks. Reducing a complicated story to the simple plot line of a good then and a bad now, Gurstein leaves nothing to chance. Her extreme language—things rarely go wrong, they go "terribly wrong"; the trivialization of love in contemporary society is "catastrophic"; historical ironies cannot be invoked without being "the bitterest"—suggests apocalypse when what is happening is adaptation. Gurstein also lets us know which of the authors whom she quotes are to be trusted; writers with whom she does not agree, such as Morris L. Ernst and William Seagle or William Lockhart and Robert McClure, are described as "influential" or "extremely influential," while those whom she admires, such as Harry Klor, are "admirable, if neglected." Pornographers, Gurstein quotes George Steiner, "do our imagining for us," and in that way deprive us emancipated moderns of the capacity to experience erotic love. It's a good line, but she fails to understand how her sledgehammer interpretations share with the pornographer a desire to do all her reader's thinking for her.

A realistic appreciation of the strengths and flaws of human beings might help us to recognize both that our society is poorer for its failure to appreciate reticence and that nostalgic hectoring is unlikely to recover the reticence that we need. There are very few ways out of the vexations that Gurstein describes: censorship is as odious as the materials it aims to censor. If there is a way back to reticence, however, it may lie through reticence—a quality lacking in Gurstein's treatment of it. Listening to people instead of lecturing them, we may discover that they, too, crave a world more in balance, one that recognizes their freedom but respects their sensitivities.

In her peroration, Gurstein invokes Kundera and tells us that marriage and commitment are weighty, but that liberation and pleasure-seeking are light. "Lightness or weight—there is no other alternative," she concludes ominously. Like all of Gurstein's dichotomies, this one makes little sense. We seek commitments not only out of duty, but also out of pleasure; and the good marriage should embody both. Those who hold people to impossibly high standards give them good reason to seek lower ones. •

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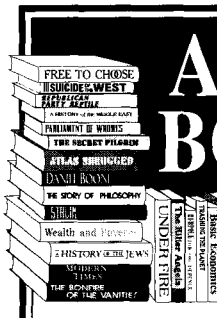

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TRB *continued from page 6*

"second" term, from 1994-96, has been largely ignored. Instead, Republicans complain that Clinton lacks the proper "character" to lead the United States abroad. Writing in the September 22 *New York Times Magazine*, Owen Harries, who had defended Clinton and his foreign policy in a 1994 cover story in TNR, contends that Clinton "fakes firmness and resolution." Perhaps the most startling example of Republican intellectual posturing comes in an article in the July/August *Foreign Affairs* by William Kristol and Robert Kagan. They call for a moralistic and "heroic" foreign policy, based on "elevated patriotism," that "educate[s] the citizenry" about the virtues of militarism and shuns "cowardice and dishonor" in favor of "destroy[ing] many of the world's monsters." This sanctimonious preening is a recipe for endless and reckless intervention everywhere, which would ultimately wreck the government's capacity to mobilize support for intervening anywhere.

For Clinton, the Republicans' failure to offer an alternative more serious than this hollow, glittering moralism presents a second chance. Foreign policy is not about virtue; it is about power. Clinton's good fortune is that, far from going into decline after the cold war, the U.S. has emerged more powerful than at any point in its history.

Foreign policy pundits, a notoriously pompous and capricious breed, will continue to insist that Clinton fashion a grand strategy commensurate with the grandness of American power. To thumb through a few back issues of TNR, however, is to put these demands in some perspective: in a September 16, 1940, editorial, Bruce Bliven, a recently lapsed Stalinist, admonished FDR that "history is peppered with the gravestones of people who failed because they only did 'the best they could' and it wasn't enough."

Like his hero FDR, Clinton will have to remain a juggler in foreign policy. Clinton may well discover that his first term was placid compared to what looms in the Middle East, Russia and Asia. As his recent speech in Detroit calling for NATO enlargement demonstrates, however, Clinton has finally grasped that foreign policy allows him to appear statesmanlike, while Dole has been reduced to mudslinging about Clinton's failure to serve in Vietnam. In his historic next term, Clinton, like Reagan, may make his mark in the one sphere in which he can exercise real leadership: foreign policy. Sometimes it takes a visionary to abandon visions.

JACOB HEILBRUNN

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A Message from Negative Population Growth, Inc.

Why Does Our Government Allow Over One Million New Immigrants to Come Here Every Year?

. . . When a Majority of Americans Say We Should Not Admit More Than 100,000 a Year at Most!!

A Roper poll, sponsored by NPG, Inc. and released in February, showed that a majority of Americans (54%) want immigration cut to not more than 100,000 a year. So why does our Federal Government allow more than **ten times that many** to come here every year?

The poll showed that 70% of Americans – **that's over two out of three** – want immigration cut drastically to not over 300,000 a year. How in the world can our government possibly justify an immigration policy that allows **four times that many** to come here every year? Don't our elected representatives have an obligation to heed the clearly expressed wishes of the American public?

The poll also showed that a substantial number of Americans (20%) simply want immigration halted completely. In other words, **one American in five wants no immigration at all.**

We urge Congress, with the vigorous support of President Clinton, to enact legislation that would drastically reduce the present level of immigration, and thus bring our immigration policy into line with the clearly expressed wishes of the overwhelming majority of the American people.

Illegal Immigration - Out of Control

Polls have shown for years that, almost unanimously, Americans want illegal immigration stopped. Despite that, our Federal Government has done very little to reduce illegal immigration, much less stop it. An estimated 350,000 illegal aliens settle here permanently each year. **That is over three times more than the 100,000 a year a majority of Americans favor for total immigration.** These illegal settlers join a pool of an estimated **five to six million** illegal aliens who are already living here permanently in violation of our laws.

The Roper poll cited above showed that 74% of Americans (three out of every four) want illegal aliens identified and deported. So why is our government not doing just that? In 1994 only about 40,000 illegal aliens were deported. A vastly increased program of deportations would not only deter prospective illegal migrants abroad, but also motivate those already here to leave voluntarily.

The Central Issue – Overpopulation

NPG urges a drastic reduction in immigration solely because of its contribution to the disastrous growth of our U.S. population. We are on the path from our present population of 265 million to a population of nearly 500 million by 2100. **More than 90% of that growth will be the direct result of post-2000 immigration.**

Immigration is the driving force behind the population growth that is devastating our environment and the quality of our lives. **Primarily because of immigration we are rushing at breakneck speed toward an environmental and economic disaster.**

U.S. Population Size – A Vitally Important National Issue

Other things being equal, **our population size determines our impact on our already over-stressed environment and increasingly scarce resources. The size of our population is, therefore, a vitally important national issue.**

If we are to have any hope at all of creating an economy that will be sustainable indefinitely, in a sound and healthy environment, with an adequate standard of living for all, we need a smaller, not a larger, U.S. population. **But we will never be able to achieve a smaller population unless we reduce immigration to a small fraction of its present level. That is a simple fact.**

Isn't there someone among our political leaders who is willing to recognize the need for a smaller U.S.population and for public policies to achieve it? He or she would have the support of a majority of Americans. The Roper poll cited above showed that 54% of Americans believe that our country is already overpopulated.

NPG is a nonprofit, national membership organization established in 1972. Contributions to NPG are tax deductible to the extent the law allows.

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NR-96

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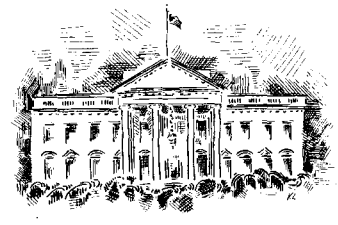
WASHINGTON DIARIST

Happy days

> Popular opinion may still support him as against the outrageous Republican alternative, and may yet conceal ... a growing and substantial dissatisfaction because of the meager results that have followed his magnificent promises, and because of the confusion and lack of direction that his rapidly shifting and self-contradictory program embodies.
> —"Is Roosevelt Slipping?" TNR, August 14, 1935.

AS PRESIDENT CLINTON PREPARES to become the first two-term Democrat since FDR, commentators on the left and the right are busy expressing skepticism about his achievement. Paul Gigot of *The Wall Street Journal* suggests that "voters may choose a man they don't trust" because Clinton has so degraded the standards of American democracy that citizens now expect nothing more from their leaders. Maureen Dowd of *The New York Times* argues that "Bill Clinton is really scary" because "[h]e is better at being opportunistic, better at frightening the country, better at playing dirty" than Bob Dole. Even the editors of this magazine, in our dutiful endorsement on page 11, are unable to muster more than a wan smile and a limp handshake for the man who will be keeping the Oval Office warm for President Gore.

AM I ALONE IN SUSPECTING THAT Clinton is not merely the lesser of two evils, but by far the most impressive president that those of us born after the death of John F. Kennedy have known? Let's begin with the case against Clinton: that he doesn't stand for anything beyond his own re-election; that he co-opts the most popular ideas of his opponents; that he is personally untrustworthy. As Gerald Gamm of the University of Rochester observes, this is precisely the same case that liberal and conservative commentators made against FDR in the 1936 campaign. FDR ran four years earlier as a balance-the-budget fiscal conservative, promising to raise taxes and cut spending. Once in office, he abandoned any semblance of ideological consistency and, in a spirit of pragmatic experimentation, proposed the Second New Deal largely to fend off more extreme proposals on the left and the right. The Social Security Act, which TNR attacked from the left as a shameful capitulation to the life insurance lobby, was Roosevelt's moderate response to the far more radical Share the Wealth Plans proposed by Dr. F.E. Townsend and Huey Long. What Roosevelt's critics underestimated in 1936, and what Clinton's critics underestimate today, is the importance of adaptability in a deliberative democracy: the virtue of tacking right and left in order to govern from the center; the sensitivity required to push the electorate, at any given moment, no further than it is ready to be pushed. Health care, after all, was the debacle of Clinton's first term, just as court packing was the debacle of Roosevelt's second: in both cases, high-handed and defensive presidents tried to govern by fiat rather than leading by argument and persuasion.



SUBSTANTIVELY, OF course, the achievements of Clinton's and Roosevelt's first terms can't be compared. FDR, for all his bobbing and weaving, was a programmatic and revolutionary president whose construction of the New Deal activist state precipitated what Yale law professor Bruce Ackerman has called a "constitutional moment." Clinton is a conservative president who seeks to defend the rudiments of the New Deal from the counter-revolutionary proposals of the Gingrich Congress, while paring away the excesses of the Great Society. Like Dwight Eisenhower, another conservative bridge president who reconciled the 1950s Republicans to the welfare state legacy of FDR, Clinton has helped the Democrats accept the laissez-faire legacy of Ronald Reagan. But, without a depression or a war to fight, Clinton is in the awkward position of being the first president since LBJ to offer a rhetorical defense of federal activism, while acknowledging at the same time that "the era of big government is over."

BECAUSE OF THESE CONFLICTING impulses, there is an odd disproportion between means and ends at the core of Clinton's domestic program. By expanding federal involvement into areas that have traditionally, and properly, been left to the states—school uniforms, family leave, marriage, the death penalty, the police—Clinton has committed himself to laws that are symbolic at best and illiberal and constitutionally dubious at worst. It's no coincidence that the great constitutional dramas of Clinton's second term, like FDR's, will probably concern the scope of federal powers rather than the expansion of fundamental rights. Early next year, the Supreme Court will tell us whether Congress had the power to enact the unassuming centerpiece of Clinton's domestic agenda, the Brady bill. Fortunately, Clinton's most enduring legacy is his two sterling Supreme Court appointments. Ruth Bader Ginsburg and Stephen Breyer are more inclined than their Republican colleagues to defer to the political branches, and they are committed to preserving the New Deal rather than precipitating a sixtieth anniversary reprise of the crisis of 1937. (Perhaps Justice O'Connor will make a switch in time!) At the very least, Clinton deserves to be re-elected for reclaiming the banner of judicial restraint that Democrats carried during the Roosevelt era.

GIVEN THE CONTRADICTIONS AT the heart of Clinton's presidency, what is it, precisely, that I admire about him? The answer, I suppose, is his character. Clinton's defining impulse, after all, is not insincerity but a surfeit of empathy: he earnestly does believe in the possibility of reconciling contradictions that can't be logically reconciled: Reagan with Roosevelt, racialism with color-blindness, family values with civil liberties. But, as Clinton demonstrates in his moving speeches to black churches, a Whitmanesque capacity to embrace contradictions isn't always a vice in a balkanized age. I suppose, in the end, that I also admire Clinton's intelligence and his passion for argument, which vindicates the Madisonian premises that Ronald Reagan's success called into question. Clinton, who may be smarter, although less elegantly duplicitous, than Kennedy and Roosevelt, reassures us that a first-rate education isn't necessarily a disqualification for leadership in American democracy. On this point, the networks missed the most telling image in the second presidential debate last week. After the final question, as both candidates fanned out into the audience, Dole awkwardly signed autographs and mumbled greetings to well-wishes. Suddenly, the C-SPAN camera zeroed in on Clinton, who had backed a middle-aged questioner against a wall and was earnestly trying to argue with her about the merits of one position or another. His eyes fixed single-mindedly on his target, he continued to argue animatedly for four minutes. All told, Clinton lingered for forty minutes, debating undecided citizens, one by one. If there's a better way for the president of the United States to conduct his final campaign, I can't imagine it.

JEFFREY ROSEN

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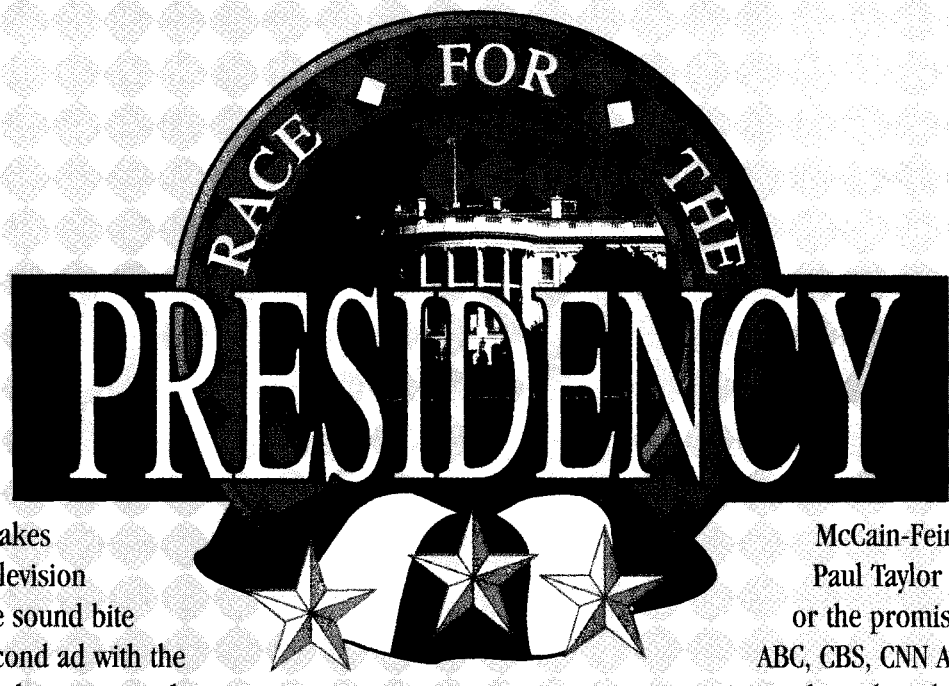

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